

**H. B. 3042**

(By Delegates Walters, Manypenny, Martin, Caputo,  
Barker and Manchin)

(By Request of Department of Environmental Protection)

[Introduced February 7, 2011; referred to the  
Committee on the Judiciary then Finance.]

A BILL to repeal §22-6-41 of the Code of West Virginia, 1931, as amended; to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of said code; to amend and reenact §22-6-1, §22-6-2, §22-6-3, §22-6-4, §22-6-5, §22-6-6, §22-6-7, §22-6-8, §22-6-9, §22-6-10, §22-6-11, §22-6-12, §22-6-13, §22-6-14, §22-6-15, §22-6-16, §22-6-17, §22-6-18, §22-6-19, §22-6-20, §22-6-21, §22-6-22, §22-6-23, §22-6-24, §22-6-25, §22-6-26, §22-6-27, §22-6-28, §22-6-29, §22-6-30, §22-6-31, §22-6-32, §22-6-33, §22-6-34, §22-6-35, §22-6-36, §22-6-37, §22-6-38, §22-6-39 and §22-6-40 of said code; to amend and reenact §22-7-3 of said code; to amend and reenact §22C-8-2 and §22C-8-4 of said code; to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3 and §22C-9-4 of said code; and to amend said code by adding thereto a new section, designated §22C-9-7a, all relating to the regulation of oil and gas wells; oil and gas production damage compensation; the shallow gas well review board; the conservation commission;

1 the pooling of gas from horizontal shallow wells; and  
2 increasing civil penalties.

3 *Be it enacted by the Legislature of West Virginia:*

4 That §22-6-41 of the Code of West Virginia, 1931, as amended,  
5 be repealed; that §22C-7-1, §22C-7-2 and §22C-7-3 of said code be  
6 repealed; that §22-6-1, §22-6-2, §22-6-3, §22-6-4, §22-6-5, §22-6-  
7 6, §22-6-7, §22-6-8, §22-6-9, §22-6-10, §22-6-11, §22-6-12, §22-6-  
8 13, §22-6-14, §22-6-15, §22-6-16, §22-6-17, §22-6-18, §22-6-19,  
9 §22-6-20, §22-6-21, §22-6-22, §22-6-23, §22-6-24, §22-6-25, §22-6-  
10 26, §22-6-27, §22-6-28, §22-6-29, §22-6-30, §22-6-31, §22-6-32,  
11 §22-6-33, §22-6-34, §22-6-35, §22-6-36, §22-6-37, §22-6-38, §22-6-  
12 39 and §22-6-40 of said code be amended and reenacted; that §22-7-3  
13 of said code be amended and reenacted; that §22C-8-2 and §22C-8-4  
14 of said code be amended and reenacted; that §22C-9-1, §22C-9-2,  
15 §22C-9-3 and §22C-9-4 of said code be amended and reenacted; and  
16 that said code be amended by adding thereto a new section,  
17 designated §22C-9-7a, all to read as follows:

18 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

19 **ARTICLE 6. OFFICE DIVISION OF OIL AND GAS; OIL AND GAS WELLS;**  
20 **ADMINISTRATION; ENFORCEMENT.**

21 **§22-6-1. Definitions.**

22 Unless the context in which used clearly requires a different  
23 meaning, as used in this article:

24 (a) "Administratively complete application" means an

1 application for permit approval that the secretary determines to  
2 contain information addressing each application requirement of the  
3 regulatory program and to contain all information necessary to  
4 initiate processing and review;

5 (b) "Assessment officer" means an employee of the department,  
6 other than an oil and gas inspector supervisor, inspector or  
7 inspector-in-training, appointed by the secretary to issue proposed  
8 penalty assessments and to conduct informal conferences to review  
9 notices, orders, and proposed penalty assessments;

10 (c) "Best management practice" means schedules of activities,  
11 prohibitions of practices, maintenance procedures, and other  
12 management practices that will prevent or reduce pollution of  
13 waters of the state and include treatment requirements, operating  
14 procedures, and practices to control site runoff, spillage or  
15 leaks, sludge or waste disposal or drainage from raw material  
16 storage;

17 ~~(a)~~ (d) "Casing" means a string or strings of pipe commonly  
18 placed in wells drilled for natural gas or petroleum or both;

19 ~~(b)~~ (e) "Cement" means hydraulic cement properly mixed with  
20 water;

21 ~~(c)~~ (f) "Chair" means the chair of the West Virginia Shallow  
22 Gas Well Review Board as provided for in section four, article  
23 eight, chapter twenty-two-c of this code;

24 ~~(d)~~ (g) "Coal operator" means any person or persons, firm,

1 partnership, partnership association or corporation that proposes  
2 to or does operate a coal mine;

3 ~~(e)~~ (h) "Coal seam" and "workable coal bed" are  
4 interchangeable terms and mean any seam of coal twenty inches or  
5 more in thickness, unless a seam of less thickness is being  
6 commercially worked, or can in the judgment of the department  
7 foreseeably be commercially worked and will require protection if  
8 wells are drilled through it;

9 ~~(f)~~ "Director" means the director of the Division of  
10 Environmental Protection as established in article one of this  
11 chapter or such other person to whom the director has delegated  
12 authority or duties pursuant to sections six or eight, article one  
13 of this chapter;

14 ~~(g)~~ (i) "Deep well" means any well other than a shallow well  
15 or coalbed methane well, drilled ~~and completed in~~ to a formation ~~at~~  
16 ~~or~~ below the top of the uppermost member of the "Onondaga Group;"

17 ~~(h)~~ (j) "Expanding cement" means any cement approved by the  
18 ~~office~~ division of oil and gas which expands during the hardening  
19 process, including, but not limited to, regular oil field cements  
20 with the proper additives;

21 ~~(i)~~ (k) "Facility" means any facility utilized in the oil and  
22 gas industry in this state and specifically named or referred to in  
23 this article or in article eight, ~~or nine,~~ ten or twenty-one of  
24 this chapter, other than a well or well site;

1       ~~(j)~~ (l) "Gas" means all natural gas and all other fluid  
2 hydrocarbons not defined as oil in this section;

3       (m) "Impoundment" means a man-made excavation or diked area  
4 for the retention of fresh water and into which no wastes of any  
5 kind are placed;

6       (n) "Modification" means any change to the permit or permit  
7 application that would require renotice to any party originally  
8 receiving notice as part of the permit application or any changes  
9 to the plat or casing program, whether or not such changes would  
10 require renotice;

11       (o) "Occupied dwelling" means any building that is currently  
12 being used on a regular or periodic basis for human habitation;

13       ~~(k)~~ (p) "Oil" means natural crude oil or petroleum and other  
14 hydrocarbons, regardless of gravity, which are produced at the well  
15 in liquid form by ordinary production methods and which are not the  
16 result of condensation of gas after it leaves the underground  
17 reservoirs;

18       ~~(l)~~ (q) "Owner" when used with reference to any well, shall  
19 include any person or persons, firm, partnership, partnership  
20 association or corporation that owns, manages, operates, controls  
21 or possesses such well as principal, or as lessee or contractor,  
22 employee or agent of such principal;

23       ~~(m)~~ (r) "Owner" when used with reference to any coal seam,  
24 shall include any person or persons who own, lease or operate such

1 coal seam;

2 ~~(n)~~ (s) "Person" means any natural person, corporation, firm,  
3 partnership, partnership association, venture, receiver, trustee,  
4 executor, administrator, guardian, fiduciary or other  
5 representative of any kind, and includes any government or any  
6 political subdivision or any agency thereof;

7 (t) "Pit" means a man-made excavation or diked area that  
8 contains or is intended to contain an accumulation of process waste  
9 fluids, drill cuttings or any other liquid substance that could  
10 impact surface or groundwater;

11 (u) "Pollutant" shall have the same meaning as provided in  
12 subsection (17), section three, article eleven, chapter twenty-two  
13 of this code;

14 ~~(o)~~ (v) "Plat" means a map, drawing or print showing the  
15 location of a well or wells as herein defined;

16 (w) "Replacement of water supply" means, with respect to water  
17 supplies, contaminated, diminished or interrupted provision of  
18 water supply on both a temporary and permanent basis of at least  
19 equivalent quality and quantity. Replacement includes provision of  
20 an equivalent water delivery system and payment of operation and  
21 maintenance cost in excess of customary and reasonable delivery  
22 cost for the replaced water supplies. Upon agreement by the  
23 operator and the water supply owner, the obligation to pay the  
24 costs may be satisfied by a one-time payment in an amount which

1 covers the present annual operation and maintenance costs for a  
2 period agreed to by the operator and the water supply owner;

3 ~~(p)~~ (x) "Review board" means the West Virginia Shallow Gas  
4 Well Review Board as provided for in section four, article eight,  
5 chapter twenty-two-c of this code;

6 ~~(q)~~ (y) "Safe mining through of a well" means the mining of  
7 coal in a workable coal bed up to a well which penetrates such  
8 workable coal bed and through such well so that the casing or plug  
9 in the well bore where the well penetrates the workable coal bed is  
10 severed;

11 (z) "Secretary" means the Cabinet Secretary of the Department  
12 of Environmental Protection as established in article one of this  
13 chapter or such other person to whom the secretary has delegated  
14 authority or duties pursuant to sections six or eight, article one  
15 of this chapter;

16 (aa) "Shallow well" means any gas well, other than a coalbed  
17 methane well, drilled no deeper than one hundred feet below the top  
18 of the "Onondaga Group": and completed in a formation above the top  
19 of the uppermost member of the "Onondaga Group": Provided, That in  
20 drilling a shallow well the operator may penetrate into the  
21 "Onondaga Group" to a reasonable depth, not in excess of twenty  
22 feet, in order to allow for logging and completion operations, but  
23 in no event may the "Onondaga Group" formation or any formation  
24 below the "Onondaga Group" be otherwise produced, perforated or

1 stimulated in any manner;

2       (bb) "Significant, imminent environmental harm to land, air or  
3 water resources" means the existence of any condition or practice  
4 or any violation of a permit or other requirement of this article,  
5 which condition, practice of violation could reasonably be expected  
6 to cause significant and imminent environmental harm to land, air  
7 or water resources. The term "environmental harm" means any  
8 material adverse impact on land, air or water resources, including  
9 but not limited to plant, wildlife and fish, and the environmental  
10 harm is imminent if a condition or practice exists that is causing  
11 the harm or may reasonably be expected to cause the harm at any  
12 time before the end of the abatement time set by the secretary. An  
13 environmental harm is "significant" if that harm is material and  
14 not immediately repairable;

15       (cc) "Stimulate" means any action taken by a well operator to  
16 increase the inherent productivity of an oil or gas well,  
17 including, but not limited to, fracturing, shooting or acidizing,  
18 but excluding cleaning out, bailing or work over operations;

19       (dd) "Waste" means: (i) Physical waste, as the term is  
20 generally understood in the oil and gas industry; (ii) the  
21 locating, drilling, equipping, operating or producing of any oil or  
22 gas well in a manner that causes, or tends to cause a substantial  
23 reduction in the quantity of oil and gas ultimately recoverable  
24 from a pool under prudent and proper operations, or that causes or



1 tends to cause a substantial or unnecessary or excessive surface  
2 loss of oil or gas; or (iii) the drilling of more deep wells than  
3 are reasonably required to recover efficiently and economically the  
4 maximum amount of oil and gas from a pool; (iv) substantially  
5 inefficient, excessive or improper use, or the substantially  
6 unnecessary dissipation of, reservoir energy, it being understood  
7 that nothing in this chapter shall be construed to authorize any  
8 agency of the state to impose mandatory spacing of shallow wells  
9 except for the provisions of section eight, article nine, chapter  
10 twenty-two-c of this code and the provisions of article eight,  
11 chapter twenty-two-c of this code; (v) inefficient storing of oil  
12 or gas: *Provided*, That storage in accordance with a certificate of  
13 public convenience issued by the Federal Energy Regulatory  
14 Commission shall be conclusively presumed to be efficient; and (vi)  
15 other underground or surface waste in the production or storage of  
16 oil, gas or condensate, however caused. Waste does not include gas  
17 vented or released from any mine areas as defined in section two,  
18 article one, chapter twenty-two-a of this code or from adjacent  
19 coal seams which are the subject of a current permit issued under  
20 article two of chapter twenty-two-a of this code: *Provided*,  
21 *however*, That nothing in this exclusion is intended to address  
22 ownership of the gas;

23 (ee) "Waters of this state: Shall have the same meaning as  
24 the term "waters" as provided in subsection (23), section three,

1 article eleven, chapter twenty-two of this code;

2        (ff) "Well" means any shaft or hole sunk, drilled, bored or  
3 dug into the earth or into underground strata for the extraction or  
4 injection or placement of any liquid or gas, or any shaft or hole  
5 sunk or used in conjunction with such extraction or injection or  
6 placement. The term "well" does not include any shaft or hole  
7 sunk, drilled, bored or dug into the earth for the sole purpose of  
8 core drilling or pumping or extracting therefrom potable, fresh or  
9 usable water for household, domestic, industrial, agricultural or  
10 public use;

11        (gg) "Well work" means the drilling, redrilling, deepening,  
12 stimulating, pressuring by injection of any fluid, converting from  
13 one type of well to another, combining or physically changing to  
14 allow the migration of fluid from one formation to another or  
15 plugging or replugging of any well; and

16        (hh) "Well operator" or "operator" means any person or  
17 persons, firm, partnership, partnership association or corporation  
18 that proposes to or does locate, drill, operate or abandon any well  
19 as herein defined.

20        ~~(x) "Pollutant shall have the same meaning as provided in~~  
21 ~~subsection (17), section three, article eleven, chapter twenty-two~~  
22 ~~of this code; and~~

23        ~~(y) "Waters of this state" shall have the same meaning as the~~  
24 ~~term "waters" as provided in subsection (23), section three,~~

1 ~~article eleven, chapter twenty-two of this code.~~

2 **§22-6-2. Secretary -- Powers and duties generally; department**  
 3 **records open to public; inspectors.**

4 (a) The secretary shall have as his or her duty the  
 5 supervision of the execution and enforcement of matters related to  
 6 oil and gas set out in this article and in articles eight, ~~and~~  
 7 nine, ten, and twenty-one of this chapter.

8 (b) The secretary is authorized to propose rules for  
 9 legislative approval in accordance with the provisions of article  
 10 three, chapter twenty-nine-a of this code necessary to effectuate  
 11 the above stated purposes.

12 (c) The secretary shall have full charge of the oil and gas  
 13 matters set out in this article and in articles eight, ~~and~~ nine,  
 14 ten, and twenty-one of this chapter. In addition to all other  
 15 powers and duties conferred upon him or her, the secretary shall  
 16 have the power and duty to:

17 (1) Supervise and direct the activities of the ~~office~~ division  
 18 of oil and gas and see that the purposes set forth in subsections  
 19 (a) and (b) of this section are carried out;

20 (2) ~~Employ a supervising oil and gas inspector and oil and gas~~  
 21 ~~inspectors~~ Determine the number of supervising oil and gas  
 22 inspectors and oil and gas inspectors needed to carry out the  
 23 purposes of this article and articles eight, nine, ten, and twenty-  
 24 one of this chapter and appoint them as such. All appointees shall

1 be qualified civil service employees, but no person is eligible for  
2 appointment until he or she has served in a probationary status for  
3 a period of six months to the satisfaction of the secretary;

4 (3) Supervise and direct ~~such~~ oil and gas inspectors and  
5 supervising inspectors in the performance of their duties;

6 (4) ~~Suspend for good cause any oil and gas inspector or~~  
7 ~~supervising inspector without compensation for a period not~~  
8 ~~exceeding thirty days in any calendar year~~ Make investigations or  
9 inspections necessary to ensure complete compliance with the  
10 provisions of this code and enforce the provisions of this article  
11 and articles eight, nine, ten, and twenty-one of this chapter;

12 (5) Prepare report forms to be used by oil and gas inspectors  
13 or ~~the~~ supervising inspectors in making their findings, orders and  
14 notices, upon inspections made in accordance with this article and  
15 articles ~~seven,~~ eight, nine, ~~and~~ ten, and twenty-one of this  
16 chapter;

17 (6) Employ a hearing officer and such clerks, stenographers,  
18 and other employees as may be necessary to carry out ~~his or her~~  
19 their duties and the purposes of the ~~office~~ division of oil and gas  
20 and fix their compensation;

21 (7) Hear and determine applications made by owners, well  
22 operators, ~~and~~ or coal operators for the annulment or revision of  
23 orders made by oil and gas inspectors or ~~the~~ supervising  
24 inspectors; ~~and to make inspections, in accordance with the~~

1 ~~provisions of this article and articles eight and nine of this~~  
2 ~~chapter;~~

3 (8) Cause a properly indexed permanent and public record to be  
4 kept of all inspections made by the secretary or by oil and gas  
5 inspectors or ~~the~~ supervising inspectors;

6 (9) Conduct ~~such~~ research and studies as the secretary ~~shall~~  
7 deems necessary to aid in protecting the health and safety of  
8 persons employed within or at potential or existing oil or gas  
9 production fields within this state, to improve drilling and  
10 production methods, and to provide for the more efficient  
11 protection and preservation of oil and gas-bearing rock strata and  
12 property used in connection therewith;

13 (10) Collect a permit fee of ~~four hundred dollars~~ \$400 for  
14 each permit application filed other than an application for a deep  
15 well or a coalbed methane well or a well that is drilled  
16 horizontally; and collect a permit fee of ~~six hundred fifty dollars~~  
17 \$650 for each permit application filed for a deep well; and collect  
18 a permit fee of \$10,000 for each permit application filed for a  
19 well that is drilled horizontally: *Provided,* That no permit  
20 application fee shall be required when an application is submitted  
21 solely for the plugging or replugging of a well, or to modify an  
22 existing application or permit for which the operator previously  
23 has submitted a permit fee under this section. All application  
24 fees required hereunder shall be in lieu of and not in addition to

1 any fees imposed under article eleven of this chapter relating to  
2 discharges of stormwater but shall be in addition to any other fees  
3 required by the provisions of this article; *Provided, however, That*  
4 upon a final determination by the United States Environmental  
5 Protection Agency regarding the scope of the exemption under  
6 section 402(1)(2) of the federal Clean Water Act (33 U.S.C.  
7 1342(1)(2)), which determination requires a "national pollutant  
8 discharge elimination system" permit for stormwater discharges from  
9 the oil and gas operations described therein, any permit fees for  
10 stormwater permits required under article eleven of this chapter  
11 for ~~such~~ these operations shall not exceed \$100.

12 (11) Perform all other duties which are expressly imposed upon  
13 the secretary by ~~the provisions of~~ this chapter;

14 (12) Perform all duties as the permit issuing authority for  
15 the state in all matters pertaining to the exploration,  
16 development, production, storage, and recovery of this state's oil  
17 and gas;

18 (13) Adopt rules with respect to the issuance, denial,  
19 retention, suspension or revocation of permits, authorizations, and  
20 requirements of this chapter, which rules shall assure that the  
21 rules, permits, and authorizations issued by the secretary are  
22 adequate to satisfy the purposes of this article and articles  
23 ~~seven, eight, nine, and ten,~~ and twenty-one of this chapter,  
24 particularly with respect to the consolidation of the various state

1 and federal programs which place permitting requirements on the  
2 exploration, development, production, storage, and recovery of this  
3 state's oil and gas ~~Provided, That notwithstanding any provisions~~  
4 ~~of this article and articles seven, eight, nine and ten of this~~  
5 ~~chapter to the contrary, the environmental quality board shall have~~  
6 ~~the sole authority pursuant to section three, article three,~~  
7 ~~chapter twenty-two-b to promulgate rules setting standards of water~~  
8 ~~quality applicable to waters of the state; and~~

9 (14) Perform ~~such~~ acts as may be necessary or appropriate to  
10 secure to this state the benefits of federal legislation  
11 establishing programs relating to the exploration, development,  
12 production, storage, and recovery of this state's oil and gas,  
13 which programs are assumable by the state.

14 (d) ~~The Secretary shall have authority to visit and inspect~~  
15 ~~any well or well site and any other oil or gas facility in this~~  
16 ~~state and may call for the assistance of any oil and gas inspector~~  
17 ~~or inspectors or supervising inspector whenever such assistance is~~  
18 ~~necessary in the inspection of any such well or well site or any~~  
19 ~~other oil or gas facility. Similarly, all All oil and gas~~  
20 ~~inspectors and the supervising inspectors shall have authority are~~  
21 ~~authorized to visit and inspect any well or well site and any other~~  
22 ~~oil or gas facility in this state. They shall make all necessary~~  
23 ~~surveys and inspections of oil and gas operations required by this~~  
24 ~~article and articles eight, nine, ten, and twenty-one of this~~

1 chapter; administer and enforce all oil and gas laws and rules; and  
2 perform other duties and services as may be prescribed by the  
3 secretary. Inspectors shall give particular attention to all  
4 conditions of each permit to ensure complete compliance therewith.  
5 They shall note and describe all violations of this article and  
6 articles eight, nine, ten, or twenty-one of this chapter and  
7 immediately report those violations to the secretary in writing,  
8 furnishing at the same time a copy of the report to the operator  
9 concerned. Any well operator, coal operator operating coal seams  
10 beneath the tract of land, or the coal seam owner or lessee, if  
11 any, if said owner or lessee is not yet operating said coal seams  
12 beneath said tract of land may request the Secretary to have an  
13 immediate inspection made. The operator or owner of every well or  
14 well site or any other oil or gas facility shall cooperate with the  
15 Secretary, all oil and gas inspectors and the supervising inspector  
16 in making inspections or obtaining information.

17 (e) ~~Oil and gas inspectors shall devote their full time and~~  
18 ~~undivided attention to the performance of their duties, and they~~  
19 ~~shall be responsible for the inspection of all wells or well sites~~  
20 ~~or other oil or gas facilities in their respective districts as~~  
21 ~~often as may be required in the performance of their duties. Any~~  
22 well operator, coal operator operating coal seams beneath the tract  
23 of land, or the coal seam owner or lessee, if any, if the owner or  
24 lessee is not yet operating the coal seams beneath the tract of



1 land, may request the secretary to make an immediate inspection.  
2 The operator or owner of every well or well site or any other oil  
3 or gas facility shall cooperate with the secretary, all oil and gas  
4 inspectors, and supervising inspectors in making inspections or  
5 obtaining information.

6 (f) All records of the office shall be open to the public.

7 ~~§22-6-3. Findings and orders of inspectors concerning violations;~~  
8 ~~determination of reasonable time for abatement;~~  
9 ~~extensions of time for abatement; special inspections;~~  
10 ~~notice of findings and orders.~~

11 ~~(a) If an oil and gas inspector, upon making an inspection of~~  
12 ~~a well or well site or any other oil or gas facility, finds that~~  
13 ~~any provision of this article is being violated, the inspector~~  
14 ~~shall also find whether or not an imminent danger to persons~~  
15 ~~exists, or whether or not there exists an imminent danger that a~~  
16 ~~fresh water source or supply will be contaminated or lost. If the~~  
17 ~~inspector finds that such imminent danger exists, an order~~  
18 ~~requiring the operator of such well or well site or other oil or~~  
19 ~~gas facility to cease further operations until such imminent danger~~  
20 ~~has been abated shall be issued by the inspector. If the inspector~~  
21 ~~finds that no such imminent danger exists, the inspector shall~~  
22 ~~determine what would be a reasonable period of time within which~~  
23 ~~such violation should be totally abated. Such findings shall~~  
24 ~~contain reference to the provisions of this article which the~~

~~1 inspector finds are being violated, and a detailed description of  
2 the conditions which cause and constitute such violation.~~

~~3 (b) The period of time so found by such oil and gas inspector  
4 to be a reasonable period of time shall not exceed seven days.  
5 Such period may be extended by such inspector, or by any other oil  
6 and gas inspector duly authorized by the director, from time to  
7 time, for good cause, but not to exceed a total of thirty days,  
8 upon the making of a special inspection to ascertain whether or not  
9 such violation has been totally abated: *Provided*, That such thirty-  
10 day period may be extended beyond thirty days by such inspectors  
11 where abatement is shown to be incapable of accomplishment because  
12 of circumstances or conditions beyond the control of the well  
13 operator. The director shall cause a special inspection to be  
14 made: (A) Whenever an operator of a well or well site or any other  
15 oil or gas facility, prior to the expiration of any such period of  
16 time, requests the director to cause a special inspection to be  
17 made at such well or well site or any other oil or gas facility;  
18 and (B) upon expiration of such period of time as originally fixed  
19 or as extended, unless the director is satisfied that the violation  
20 has been abated. Upon making such special inspection, such oil and  
21 gas inspector shall determine whether or not such violation has  
22 been totally abated. If the inspector determines that such  
23 violation has not been totally abated, the inspector shall  
24 determine whether or not such period of time as originally fixed,~~

~~1 or as so fixed and extended, should be extended. If the inspector  
2 determines that such period of time should be extended, the  
3 inspector shall determine what a reasonable extension would be. If  
4 the inspector determines that such violation has not been totally  
5 abated, and if such period of time as originally fixed, or as so  
6 fixed and extended, has then expired, and if the inspector also  
7 determines that such period of time should not be further extended,  
8 the inspector shall thereupon make an order requiring the operator  
9 of such well or well site or other oil or gas facility to cease  
10 further operations of such well, well site or facility, as the case  
11 may be. Such findings and order shall contain reference to the  
12 specific provisions of this article which are being violated.~~

~~13 (c) Notice of each finding and order made under this section  
14 shall promptly be given to the operator of the well or well site or  
15 other oil or gas facility to which it pertains by the person making  
16 such finding or order.~~

~~17 (d) No order shall be issued under the authority of this  
18 section which is not expressly authorized herein.~~

19 **§22-6-3. Permit required for well work; permit fee; application;**  
20 **soil erosion control plan.**

21 (a) It is unlawful for any person to commence any well work,  
22 including site preparation work which involves any disturbance of  
23 land, without first securing from the secretary a well work permit.  
24 An application may propose and a permit may approve two or more

1 activities defined as well work, though a separate permit must be  
2 obtained for each well drilled.

3 (b) The application for a well work permit shall be  
4 accompanied by the applicable bond as prescribed by section twelve,  
5 fourteen or twenty-three of this article, and the applicable plat  
6 required by section twelve or fourteen of this article.

7 (c) Every permit application filed under this section shall be  
8 on the form prescribed by the secretary, shall be verified, and  
9 shall contain the following:

10 (1) The names and addresses of (A) The permit applicant; (B)  
11 The owner of record of the property, to include surface, mineral,  
12 and storage rights, proposed to be developed; (C) The holders of  
13 record of any leasehold interest in the property; (D) The agent  
14 required to be designated by subsection (e) of this section; (E) If  
15 the applicant is a business entity other than a sole proprietor,  
16 the names and business addresses of the principals, officers, and  
17 resident agent; and (F) Every person whom the applicant must notify  
18 under any section of this article, together with a certification  
19 and evidence that a copy of the application and all other required  
20 documentation has been delivered to all those persons;

21 (2) The name and address of every coal operator operating coal  
22 seams under the tract of land on which the well is or may be  
23 located, and the coal seam owner of record and lessee of record  
24 required to be given notice by sections twelve and fourteen, if

- 1 any, if the owner or lessee is not yet operating said coal seams;
- 2 (3) The number of the well or other identification as the  
3 secretary may require;
- 4 (4) The type of well;
- 5 (5) The well work for which a permit is requested;
- 6 (6) The approximate depth to which the well is to be drilled  
7 or deepened, or the actual depth if the well has been drilled;
- 8 (7) Each formation in which the well will be completed if  
9 applicable;
- 10 (8) Any permit application fee required by law;
- 11 (9) If the proposed well work will require casing or tubing to  
12 be set, the entire casing program for the well, including the size  
13 of each string of pipe, the starting point and depth to which each  
14 string is to be set, and the extent to which each such string is to  
15 be cemented;
- 16 (10) If the proposed well work is to convert an oil well or a  
17 combination well or to drill a new well for the purpose of  
18 introducing pressure for the recovery of oil as provided in section  
19 twenty-five of this article, specifications in accordance with the  
20 data requirements of section fourteen of this article;
- 21 (11) If the proposed well work is to plug or replug the  
22 well, (A) Specifications in accordance with the data requirements of  
23 section twenty-three of this article; (B) A copy of all logs in the  
24 operator's possession as the secretary may require; and (C) A work

1 order showing in detail the proposed manner of plugging or  
2 unplugging the well, in order that a representative of the  
3 secretary and any interested persons may be present when the work  
4 is done. In the event of an application to drill, redrill or  
5 deepen a well, if the well work is unsuccessful so that the well  
6 must be plugged and abandoned, and if the well is one on which the  
7 well work has been continuously progressing pursuant to a permit,  
8 the operator may proceed to plug the well as soon as the operator  
9 has obtained the verbal permission of the secretary or the  
10 secretary's designated representative to plug and abandon the well,  
11 except that the operator shall make reasonable effort to notify as  
12 soon as practicable the surface owner and the coal owner, if any,  
13 of the land at the well location, and shall also timely file the  
14 plugging affidavit required by section twenty-three of this  
15 article;

16 (12) If the proposed well work is to stimulate an oil or gas  
17 well, specifications in accordance with the data requirements of  
18 section thirteen of this article;

19 (13) The erosion and sediment control plan required by  
20 subsection (d) of this section for applications for permits to  
21 drill;

22 (14) A well site safety plan to address proper safety measures  
23 to be employed for the protection of persons on the site as well as  
24 the general public. The plan shall encompass all aspects of the

1 operation, including the actual well work for which the permit was  
2 obtained, completion activities, and production activities;

3 (15) A statement of whether the applicant or any officer,  
4 partner, director, principal shareholder of the applicant, any  
5 subsidiary, affiliate or persons controlled by or under common  
6 control with the applicant has ever been an officer, partner,  
7 director or principal shareholder in a company that has ever held  
8 a well work permit in this or any other state that has been revoked  
9 or has had a bond or similar security deposited in lieu of bond  
10 forfeited and, if so, a brief explanation of the facts involved;  
11 and

12 (16) Any other relevant information which the secretary may  
13 require.

14 (d) (1) An erosion and sediment control plan shall accompany  
15 each application for a well work permit, except for a well work  
16 permit to plug or replug any well. The erosion and sediment  
17 control plan shall contain methods of stabilization and drainage,  
18 including a map of the project area indicating the amount of  
19 acreage disturbed. The erosion and sediment control plan shall  
20 meet the minimum requirements of the West Virginia erosion and  
21 sediment control manual as adopted and from time to time amended by  
22 the department. The erosion and sediment control plan shall become  
23 part of the terms and conditions of any well work permit that is

1 issued, except for a well work permit to plug or replug any well,  
2 and the provisions of the plan shall be carried out where  
3 applicable in the operation. The erosion and sediment control plan  
4 shall set out the proposed method of reclamation which shall comply  
5 with the requirements of section thirty of this article. For  
6 permits to plug or replug any well, the operator shall submit a  
7 reclamation plan in accordance with established best management  
8 practices as contained in the Erosion and Sediment Control Manual.

9 (2) For well sites that disturb five acres or more of surface,  
10 excluding pipelines, gathering lines, and roads, the erosion and  
11 sediment control plan shall be certified by a registered  
12 professional engineer.

13 (e) For well sites that disturb five acres or more of surface,  
14 excluding pipelines, gathering lines, and roads, the operator shall  
15 submit a site construction plan that shall be certified by a  
16 registered professional engineer and contains information that the  
17 secretary may require by rule.

18 (f) The well operator named in the application shall designate  
19 the name and address of an agent for the operator who shall be the  
20 attorney-in-fact for the operator and who shall be a resident of  
21 the State of West Virginia upon whom notices, orders or other  
22 communications issued pursuant to this article or article eleven,  
23 chapter twenty-two, may be served, and upon whom process may be



1 served. Every well operator required to designate an agent under  
2 this section shall, within five days after the termination of the  
3 designation, notify the secretary of the termination and designate  
4 a new agent.

5 (g) The well owner or operator shall install the permit number  
6 as issued by the secretary and a contact telephone number for the  
7 operator in a legible and permanent manner to the well upon  
8 completion of any permitted work. The dimensions, specifications,  
9 and manner of installation shall be in accordance with the rules  
10 of the secretary.

11 (h) In addition to the other requirements of this article, an  
12 application for a well work permit for a gas well that is drilled  
13 horizontally shall include, in addition to the information listed  
14 above, a water management plan, which shall:

15 (1) Explain if the drilling, fracturing or stimulating of the  
16 horizontal well requires the use of water obtained by withdrawals  
17 from waters of the state in amounts that exceed two hundred ten  
18 thousand gallons during any month; and

19 (2) Include the following information:

20 (A) The type of water source, such as surface or groundwater,  
21 the county of each source to be used by the operation for water  
22 withdrawals, and the latitude and longitude of each anticipated  
23 withdrawal location;

- 1       (B) The anticipated volume of each water withdrawal;
- 2       (C) The anticipated months when water withdrawals will be  
3 made;
- 4       (D) The planned management and disposition of wastewater from  
5 fracturing, stimulation, and production activities;
- 6       (E) A listing of the anticipated additives that may be used  
7 for fracturing or stimulating the well. Upon well completion, a  
8 listing of the additives that were actually used in the fracturing  
9 or stimulating of the well shall be submitted as part of the  
10 completion report;
- 11       (F) For all surface water withdrawals, a water resources  
12 protection plan that includes the information requested in  
13 paragraphs (A) through (E) of this subdivision and includes  
14 documentation of measures that will be taken to allow the state to  
15 manage the quantity of its waters for present and future use and  
16 enjoyment and for the protection of the environment. The plan  
17 shall include the following:
- 18       (i) Identification of the current designated and existing  
19 water uses, including any public water intakes within one mile  
20 downstream of the withdrawal location;
- 21       (ii) For surface waters, a demonstration, using methods  
22 acceptable to the secretary, that sufficient in-stream flow will  
23 be available immediately downstream of the point of withdrawal. A

1 sufficient in-stream flow is maintained when a pass-by flow that is  
2 protective of the identified use of the stream is preserved  
3 immediately downstream of the point of withdrawal; and

4 (iii) Methods to be used for surface water withdrawals to  
5 minimize adverse impact to aquatic life.

6 (3) This subsection is intended to be consistent with and does  
7 not supersede, revise, repeal or otherwise modify articles eleven,  
8 twelve or twenty-six of this chapter and does not revise, repeal or  
9 otherwise modify the common law doctrine of riparian rights in West  
10 Virginia law.

11 (i) The secretary may waive the requirements of this section  
12 and sections nine, ten, and eleven of this article in any emergency  
13 situation, if the secretary deems that action necessary. In that  
14 case the secretary may issue an emergency permit which would be  
15 effective for not more than thirty days, but which would be subject  
16 to reissuance by the secretary.

17 (j) The secretary shall deny the issuance of a permit if the  
18 secretary determines that the applicant has committed a substantial  
19 violation of a previously issued permit, including the erosion and  
20 sediment control plan, or a substantial violation of one or more of  
21 the rules promulgated hereunder, and has failed to abate or seek  
22 review of the violation within the time prescribed by the secretary  
23 pursuant to the provisions of sections twenty-eight, twenty-eight-a

1 or thirty-four of this article and the rules promulgated hereunder,  
2 which time may not be unreasonable: *Provided*, That in the event  
3 that the secretary does find that a substantial violation has  
4 occurred and that the operator has failed to abate or seek review  
5 of the violation in the time prescribed, the secretary may suspend  
6 the permit on which the violation exists, after which suspension  
7 the operator shall forthwith cease all well work being conducted  
8 under the permit: *Provided*, however, That the secretary may  
9 reinstate the permit without further notice, at which time the well  
10 work may continue. The secretary shall make written findings of  
11 the determination and may enforce the same in the circuit courts of  
12 this state, and the operator may appeal the suspension pursuant to  
13 the provisions of section thirteen of this article. The secretary  
14 shall make a written finding of any such determination.

15 (k) Any person who violates any provision of this section  
16 shall be guilty of a misdemeanor, and, upon conviction thereof,  
17 shall be fined not more than \$5,000 or be imprisoned in the county  
18 jail not more than twelve months, or both fined and imprisoned.

19 ~~§22-6-4. Review of findings and orders by director; special~~  
20 ~~inspection; annulment, revision, etc., of order;~~  
21 ~~notice.~~

22 ~~(a) Any well operator, complaining coal operator, owner or~~  
23 ~~lessee, if any, aggrieved by findings or an order made by an oil or~~

~~1 gas inspector pursuant to section three of this article, may within  
2 fifteen days apply to the director for annulment or revision of  
3 such order. Upon receipt of such application the director shall  
4 make a special inspection of the well, well site or other oil and  
5 gas facility affected by such order, or cause two duly authorized  
6 oil and gas inspectors, other than the oil and gas inspector who  
7 made such order or the supervising inspector and one duly  
8 authorized oil and gas inspector other than the oil and gas  
9 inspector who made such order, to make such inspection of such  
10 well, or well site or other oil or gas facility and to report  
11 thereon to them. Upon making such special inspection, or upon  
12 receiving the report of such special inspection, as the case may  
13 be, the director shall make an order which shall include the  
14 director's findings and shall annul, revise or affirm the order of  
15 the oil and gas inspector.~~

~~16 (b) The director shall cause notice of each finding and order  
17 made under this section to be given promptly to the operator of the  
18 well, well site or other oil or gas facility to which such findings  
19 and order pertain, and the complainant under section three, if any.~~

~~20 (c) At any time while an order made pursuant to section three  
21 of this article is in effect, the operator of the well, well site  
22 or other oil or gas facility affected by such order may apply to  
23 the director for annulment or revision of such order. The director~~

1 ~~shall thereupon proceed to act upon such application in the manner~~  
2 ~~provided in this section.~~

3 ~~(d) In view of the urgent need for prompt decision of matters~~  
4 ~~submitted to the director under this article, all actions which the~~  
5 ~~director, or oil and gas inspectors or the supervising inspector~~  
6 ~~are required to take under this article, shall be taken as rapidly~~  
7 ~~as practicable, consistent with adequate consideration of the~~  
8 ~~issues involved.~~

9 **§22-6-4. Approval, denial or revision of permit.**

10 (a) Upon the receipt of an administratively complete well work  
11 permit application or application for modification of a well work  
12 permit, the secretary shall grant, require revision of, or deny the  
13 application for a permit within a reasonable time and notify the  
14 applicant in writing of the decision. The applicant for a permit  
15 or permit modification has the burden of establishing that the  
16 application is in compliance with all the requirements of this  
17 article and the rules promulgated hereunder.

18 (b) No permit or modification of a permit may be approved  
19 unless the applicant affirmatively demonstrates and the secretary  
20 finds in writing on the basis of the information set forth in the  
21 application or from information otherwise available, which shall be  
22 documented in the approval and made available to the applicant,  
23 that:

1       (1) The permit application is accurate and complete and that  
2 the applicant has complied with all the requirements of this  
3 article and the rules promulgated hereunder; and

4       (2) The applicant has demonstrated that erosion and sediment  
5 control and reclamation as required by this article can be  
6 accomplished pursuant to the erosion and sediment control plan  
7 contained in the permit application.

8       (c) The permit shall not be issued or shall be conditioned,  
9 including conditions with respect to the location of the well and  
10 access roads, prior to issuance if the secretary determines that:

11       (1) The proposed well work will constitute a hazard to the  
12 safety of persons; or

13       (2) Damage would occur to publicly owned lands or resources;  
14 or

15       (3) The proposed well work fails to protect fresh water  
16 sources or supplies.

17       (d) Where information available to the department indicates  
18 that any operation owned or controlled by the applicant is  
19 currently in violation of this article or other environmental laws  
20 or rules, the permit may not be issued until the applicant submits  
21 proof that the violation has been corrected or is in the process of  
22 being corrected to the satisfaction of the secretary or the  
23 division or agency that has jurisdiction over the violation, and no

1 permit may be issued to any applicant after a finding by the  
2 secretary, after an opportunity for hearing, that the applicant or  
3 the operator specified in the application controls or has  
4 controlled operations with a demonstrated pattern of willful  
5 violations of this article or articles eight, nine, ten, eleven or  
6 twenty-one of this chapter, of such nature and duration with such  
7 irreparable damage to the environment as to indicate an intent not  
8 to comply with the provisions of the environmental laws of the  
9 State of West Virginia: *Provided*, That if the secretary finds that  
10 the applicant is or has been affiliated with, or managed or  
11 controlled by, or is or has been under the common control of, other  
12 than as an employee, a person who has had a well work permit  
13 revoked or bond or other security forfeited for failure to comply  
14 with any environmental laws of this state, the secretary may not  
15 issue a permit to the applicant: *Provided, however*, That subject to  
16 the discretion of the secretary and based upon a petition for  
17 reinstatement, a permit may be issued to any applicant if: (1)  
18 After the revocation or forfeiture, the operator whose permit has  
19 been revoked or bond forfeited has paid into the Oil and Gas  
20 Reclamation Fund any additional sum of money determined by the  
21 secretary to be adequate to correct the noncompliance issue; (2)  
22 the violations which resulted in the revocation or forfeiture have  
23 not caused irreparable damage to the environment; and (3) the



1 secretary is satisfied that the petitioner will comply with this  
2 article.

3 (e) The secretary shall promptly review all comments filed by  
4 persons entitled to receive notice of the application. If after  
5 review of the application and all comments received, the  
6 application for a well work permit is approved, and no timely  
7 objection or comment has been filed with the secretary or made by  
8 the secretary pursuant to the provisions of sections fifteen,  
9 sixteen or seventeen of this article, the permit shall be issued,  
10 with conditions, if any. Nothing in this section shall be  
11 construed to supersede the provisions of sections three or twelve,  
12 thirteen, fourteen, fifteen, sixteen or seventeen of this article.

13 (f) The secretary shall mail a copy of the permit as issued or  
14 a copy of the order denying the permit to any person who submitted  
15 comments to the secretary concerning the permit and requested a  
16 copy.

17 (g) Upon issuance of any permit pursuant to the provisions of  
18 this article, the secretary shall transmit a copy of the plat  
19 described in section twelve of this article to the office of the  
20 assessor for the county in which the well is located.

21 ~~§22-6-5. Requirements for findings, orders and notices; posting of~~  
22 ~~findings and orders; judicial review of final orders of~~  
23 ~~director.~~

1       ~~(a) All findings and orders made pursuant to section three or~~  
2 ~~four of this article, and all notices required to be given of the~~  
3 ~~making of such findings and orders, shall be in writing. All such~~  
4 ~~findings and orders shall be signed by the person making them, and~~  
5 ~~all such notices shall be signed by the person charged with the~~  
6 ~~duty of giving the notice. All such notices shall contain a copy~~  
7 ~~of the findings and orders referred to therein.~~

8       ~~(b) Notice of any finding or order required by section three~~  
9 ~~or four of this article to be given to an operator shall be given~~  
10 ~~by causing such notice, addressed to the operator of the well, well~~  
11 ~~site or other oil and/or gas facility to which such finding or~~  
12 ~~order pertains, to be delivered to such operator by causing a copy~~  
13 ~~thereof to be sent by registered mail to the permanent address of~~  
14 ~~such operator as filed with the division and by causing a copy~~  
15 ~~thereof to be posted upon the drilling rig or other equipment at~~  
16 ~~the well, well site or other oil and/or gas facility, as the case~~  
17 ~~may be. The requirement of this article that a notice shall be~~  
18 ~~"addressed to the operator of the well, well site or other oil~~  
19 ~~and/or gas facility to which such finding or order pertains," shall~~  
20 ~~not require that the name of the operator for whom it is intended~~  
21 ~~shall be specifically set out in such address. Addressing such~~  
22 ~~notice to "Operator of \_\_\_\_\_," specifying the well,~~  
23 ~~well site or other oil and/or gas facility sufficiently to identify~~

1 ~~it, shall satisfy such requirement.~~

2       ~~(c) Any well operator, complaining coal operator, owner or~~  
3 ~~lessee, if any, adversely affected by a final order issued by the~~  
4 ~~director under section four of this article shall be entitled to~~  
5 ~~judicial review thereof. All of the pertinent provisions of~~  
6 ~~section four, article five, chapter twenty-nine-a of this code~~  
7 ~~shall apply to and govern such judicial review with like effect as~~  
8 ~~if the provisions of said section four were set forth in extenso in~~  
9 ~~this section.~~

10       ~~(d) The judgment of the circuit court shall be final unless~~  
11 ~~reversed, vacated or modified on appeal to the Supreme Court of~~  
12 ~~Appeals in accordance with the provisions of section one, article~~  
13 ~~six, chapter twenty-nine-a of this code.~~

14       ~~(e) Legal counsel and services for the director in all appeal~~  
15 ~~proceedings in any circuit court and the Supreme Court of Appeals~~  
16 ~~shall be provided by the Attorney General or his or her assistants~~  
17 ~~and in any circuit court by the prosecuting attorney of the county~~  
18 ~~as well, all without additional compensation. The director, with~~  
19 ~~written approval of the Attorney General, may employ special~~  
20 ~~counsel to represent the director at any such appeal proceedings.~~

21 **§22-6-5. Certificate of approval required for large impoundment**  
22 **construction; certificate of approval and annual**  
23 **registration fees; application required to obtain**

1           **certificate; revocation or suspension of certificates.**

2           (a) The Legislature finds that large impoundments (i.e. an  
3 impoundment with a capacity of five thousand barrels or more) not  
4 associated with a specific well work permit may constitute a  
5 potential hazard to people and property; therefore, large  
6 impoundments not permitted under a well work permit must be  
7 properly regulated and controlled to protect the health, safety and  
8 welfare of people and property in this state. It is the intent of  
9 the Legislature by this section to provide for the regulation and  
10 supervision of large impoundments not associated with a well work  
11 permit in this state to the extent necessary to protect the public  
12 health, safety and welfare. The Legislature has ordained this  
13 article to fulfill its responsibilities to the people of this state  
14 and to protect their lives and private and public property from the  
15 danger of a potential or actual failure of a large impoundment not  
16 associated with a well work permit. This section shall not apply  
17 to large impoundments associated with a well work permit.

18           (b) It is unlawful for any person to place, construct,  
19 enlarge, alter, repair, remove or abandon any impoundment with  
20 capacity of greater than five thousand barrels used in association  
21 with an oil and gas operation until he or she has first secured  
22 from the secretary a certificate of approval for the same:  
23 Provided, That routine repairs that do not affect the safety of the

1 impoundment are not subject to the application and approval  
2 requirements. A separate application for a certificate of approval  
3 must be submitted by a person for each impoundment he or she  
4 desires to place, construct, enlarge, alter, repair, remove or  
5 abandon, but one application may be valid for more than one  
6 impoundment involved in a single project.

7 (c) The application fee for placement, construction,  
8 enlargement, alteration, repair or removal of an impoundment  
9 pursuant to this section is \$300, and the fee shall accompany the  
10 application for certificate of approval.

11 (d) Operators holding certificates of approval shall be  
12 assessed an annual registration fee of \$100, which may be valid for  
13 more than one impoundment involved in a single project. Existing  
14 certificates of approval shall be extended for one year upon  
15 receipt of the annual registration fee, an inspection report, a  
16 monitoring and emergency action plan, and a maintenance plan:  
17 Provided, That where an approved, up-to-date inspection report,  
18 monitoring and emergency action plan, and maintenance plan are on  
19 file with the department, and where no outstanding violation(s)  
20 exist, then the certificate of approval will be extended without  
21 resubmission of the foregoing documents upon receipt of the annual  
22 registration fee.

23 (e) Every application for a certificate of approval shall be

1 made in writing on a form prescribed by the secretary and shall be  
2 signed and verified by the applicant. The application shall  
3 contain and provide information that may reasonably be required by  
4 the secretary to administer the provisions of this article.

5 (f) Plans and specifications for the placement, construction,  
6 erosion and sediment control, enlargement, alteration, repair or  
7 removal and reclamation of impoundments shall be the charge of a  
8 registered professional engineer licensed to practice in West  
9 Virginia. Any plans or specifications submitted to the department  
10 shall bear the seal of a registered professional engineer.

11 (g) Each certificate of approval issued by the secretary  
12 pursuant to this section may contain other terms and conditions as  
13 the secretary may prescribe.

14 (h) The secretary may revoke or suspend any certificate of  
15 approval whenever the secretary determines that the impoundment for  
16 which the certificate was issued constitutes a danger to human life  
17 or property. If necessary to safeguard human life or property, the  
18 secretary may also amend the terms and conditions of any  
19 certificate by issuing a new certificate containing the revised  
20 terms and conditions.

21 (1) Before any certificate of approval is amended or revoked  
22 by the secretary, the operator may request a hearing in accordance  
23 with the provisions of article five, chapter twenty-nine-a of this

1 code.

2 (2) A decision of the secretary to revoke or refusing to issue  
3 a certificate of approval shall be subject to judicial review by an  
4 administrative law judge of the department upon the appeal of the  
5 applicant for or holder of such certificate of approval, but in any  
6 such judicial review only the legality of the decision of the  
7 secretary pursuant to the Constitution and laws of this state and  
8 the United States shall be determined.

9 (i) Upon expiration of the certificate of approval, or upon  
10 its revocation by the secretary, the operator shall, within sixty  
11 days, fill all impoundments that are not required or allowed by  
12 state or federal law or rule or agreement between the operator and  
13 the surface owner that allows the impoundment to remain open for  
14 the use and benefit of the surface owner and reclaim the site with  
15 the approved erosion and sediment control plan.

16 (j) This section shall not apply to farm ponds constructed by  
17 the operator with the written consent of the surface owner, which  
18 will be used after completion of the drilling activity primarily  
19 for agricultural purposes, including without limitation livestock  
20 watering, irrigation, retention of animal wastes and fish culture  
21 and that have no potential to cause loss of human life in the event  
22 of embankment failure. The operator shall not use the farm pond in  
23 any way for anything other than fresh water storage. Any

1 impoundment that is intended to be left permanent shall meet the  
2 requirements set forth by the United States Department of  
3 Agriculture's Natural Resources Conservation Service "Conservation  
4 Practice Standard - Ponds" (Code 378).

5 (k) An impoundment that is constructed in a manner that it  
6 (1) rises twenty-five feet or more above the natural bed of a  
7 stream or watercourse as measured from the downstream toe of the  
8 embankment and does or can impound fifteen acrefeet or more of  
9 water; or (2) rises six feet or more above the natural bed of a  
10 stream or watercourse as measured from the downstream toe of the  
11 embankment and does or can impound fifty acrefeet or more of water  
12 is, by definition, a dam and is thereby subject to the provisions  
13 of the West Virginia Dam Control Act, article fourteen, chapter  
14 twenty-two of this code.

15 (l) The secretary is authorized to propose rules for  
16 legislative approval in accordance with the provisions of article  
17 three, chapter twenty-nine-a of this code necessary to effectuate  
18 the provisions of this article.

19 ~~§22-6-6. Permit required for well work; permit fee; application;~~  
20 ~~soil erosion control plan.~~

21 ~~(a) It is unlawful for any person to commence any well work,~~  
22 ~~including site preparation work which involves any disturbance of~~  
23 ~~land, without first securing from the director a well work permit.~~



1 ~~An application may propose and a permit may approve two or more~~  
2 ~~activities defined as well work.~~

3 ~~(b) The application for a well work permit shall be~~  
4 ~~accompanied by applicable bond as prescribed by section twelve,~~  
5 ~~fourteen or twenty-three of this article, and the applicable plat~~  
6 ~~required by section twelve or fourteen of this article.~~

7 ~~(c) Every permit application filed under this section shall be~~  
8 ~~verified and shall contain the following:~~

9 ~~(1) The names and addresses of (i) the well operator, (ii) the~~  
10 ~~agent required to be designated under subsection (e) of this~~  
11 ~~section, and (iii) every person whom the applicant must notify~~  
12 ~~under any section of this article together with a certification and~~  
13 ~~evidence that a copy of the application and all other required~~  
14 ~~documentation has been delivered to all such persons;~~

15 ~~(2) The name and address of every coal operator operating coal~~  
16 ~~seams under the tract of land on which the well is or may be~~  
17 ~~located, and the coal seam owner of record and lessee of record~~  
18 ~~required to be given notice by section twelve, if any, if said~~  
19 ~~owner or lessee is not yet operating said coal seams;~~

20 ~~(3) The number of the well or such other identification as the~~  
21 ~~director may require;~~

22 ~~(4) The type of well;~~

23 ~~(5) The well work for which a permit is requested;~~

1       ~~(6) The approximate depth to which the well is to be drilled~~  
2 ~~or deepened, or the actual depth if the well has been drilled;~~

3       ~~(7) Any permit application fee required by law;~~

4       ~~(8) If the proposed well work will require casing or tubing to~~  
5 ~~be set, the entire casing program for the well, including the size~~  
6 ~~of each string of pipe, the starting point and depth to which each~~  
7 ~~string is to be set, and the extent to which each such string is to~~  
8 ~~be cemented;~~

9       ~~(9) If the proposed well work is to convert an oil well or a~~  
10 ~~combination well or to drill a new well for the purpose of~~  
11 ~~introducing pressure for the recovery of oil as provided in section~~  
12 ~~twenty-five of this article, specifications in accordance with the~~  
13 ~~data requirements of section fourteen of this article;~~

14       ~~(10) If the proposed well work is to plug or replug the well,~~  
15 ~~(i) specifications in accordance with the data requirements of~~  
16 ~~section twenty-three of this article, (ii) a copy of all logs in~~  
17 ~~the operator's possession as the director may require, and (iii) a~~  
18 ~~work order showing in detail the proposed manner of plugging or~~  
19 ~~unplugging the well, in order that a representative of the director~~  
20 ~~and any interested persons may be present when the work is done.~~

21 ~~In the event of an application to drill, redrill or deepen a well,~~  
22 ~~if the well work is unsuccessful so that the well must be plugged~~  
23 ~~and abandoned, and if the well is one on which the well work has~~

~~1 been continuously progressing pursuant to a permit, the operator  
2 may proceed to plug the well as soon as the operator has obtained  
3 the verbal permission of the director or the director's designated  
4 representative to plug and abandon the well, except that the  
5 operator shall make reasonable effort to notify as soon as  
6 practicable the surface owner and the coal owner, if any, of the  
7 land at the well location, and shall also timely file the plugging  
8 affidavit required by section twenty-three of this article;~~

~~9 (11) If the proposed well work is to stimulate an oil or gas  
10 well, specifications in accordance with the data requirements of  
11 section thirteen of this article;~~

~~12 (12) The erosion and sediment control plan required under  
13 subsection (d) of this section for applications for permits to  
14 drill; and~~

~~15 (13) Any other relevant information which the director may  
16 require by rule.~~

~~17 (d) An erosion and sediment control plan shall accompany each  
18 application for a well work permit except for a well work permit to  
19 plug or replug any well. Such plan shall contain methods of  
20 stabilization and drainage, including a map of the project area  
21 indicating the amount of acreage disturbed. The erosion and  
22 sediment control plan shall meet the minimum requirements of the  
23 West Virginia erosion and sediment control manual as adopted and~~

1 ~~from time to time amended by the division, in consultation with the~~  
2 ~~several soil conservation districts pursuant to the control program~~  
3 ~~established in this state through section 208 of the federal Water~~  
4 ~~Pollution Control Act Amendments of 1972 (33 U.S.C.1288). The~~  
5 ~~erosion and sediment control plan shall become part of the terms~~  
6 ~~and conditions of a well work permit, except for a well work permit~~  
7 ~~to plug or replug any well, which is issued and the provisions of~~  
8 ~~the plan shall be carried out where applicable in the operation.~~  
9 ~~The erosion and sediment control plan shall set out the proposed~~  
10 ~~method of reclamation which shall comply with the requirements of~~  
11 ~~section thirty of this article.~~

12 ~~(e) The well operator named in such application shall~~  
13 ~~designate the name and address of an agent for such operator who~~  
14 ~~shall be the attorney in fact for the operator and who shall be a~~  
15 ~~resident of the State of West Virginia upon whom notices, orders or~~  
16 ~~other communications issued pursuant to this article or article~~  
17 ~~eleven, chapter twenty-two, may be served, and upon whom process~~  
18 ~~may be served. Every well operator required to designate an agent~~  
19 ~~under this section shall within five days after the termination of~~  
20 ~~such designation notify the director of such termination and~~  
21 ~~designate a new agent.~~

22 ~~(f) The well owner or operator shall install the permit number~~  
23 ~~as issued by the director in a legible and permanent manner to the~~

1 ~~well upon completion of any permitted work. The dimensions,~~  
2 ~~specifications and manner of installation shall be in accordance~~  
3 ~~with the rules of the director.~~

4 ~~(g) The director may waive the requirements of this section~~  
5 ~~and sections nine, ten and eleven of this article in any emergency~~  
6 ~~situation, if the director deems such action necessary. In such~~  
7 ~~case the director may issue an emergency permit which would be~~  
8 ~~effective for not more than thirty days, but which would be subject~~  
9 ~~to reissuance by the director.~~

10 ~~(h) The director shall deny the issuance of a permit if the~~  
11 ~~director determines that the applicant has committed a substantial~~  
12 ~~violation of a previously issued permit, including the erosion and~~  
13 ~~sediment control plan, or a substantial violation of one or more of~~  
14 ~~the rules promulgated hereunder, and has failed to abate or seek~~  
15 ~~review of the violation within the time prescribed by the director~~  
16 ~~pursuant to the provisions of sections three and four of this~~  
17 ~~article and the rules promulgated hereunder, which time may not be~~  
18 ~~unreasonable: *Provided*, That in the event that the director does~~  
19 ~~find that a substantial violation has occurred and that the~~  
20 ~~operator has failed to abate or seek review of the violation in the~~  
21 ~~time prescribed, the director may suspend the permit on which said~~  
22 ~~violation exists, after which suspension the operator shall~~  
23 ~~forthwith cease all well work being conducted under the permit:~~

1 ~~Provided, however, That the director may reinstate the permit~~  
2 ~~without further notice, at which time the well work may be~~  
3 ~~continued. The director shall make written findings of any such~~  
4 ~~determination and may enforce the same in the circuit courts of~~  
5 ~~this state and the operator may appeal such suspension pursuant to~~  
6 ~~the provisions of section forty of this article. The director~~  
7 ~~shall make a written finding of any such determination.~~

8 (i) ~~Any person who violates any provision of this section~~  
9 ~~shall be guilty of a misdemeanor, and, upon conviction thereof,~~  
10 ~~shall be fined not more than five thousand dollars, or be~~  
11 ~~imprisoned in the county jail not more than twelve months, or both~~  
12 ~~fined and imprisoned.~~

13 **§22-6-6. General environmental protection performance standards**  
14 **for oil and gas operations.**

15 (a) The secretary shall promulgate separate rules and  
16 establish best management practices directed toward the surface  
17 effects of oil and gas operations, embodying the requirements in  
18 subsection (b) of this section.

19 (b) Each permit issued by the secretary pursuant to this  
20 article and relating to oil and gas operations shall require the  
21 operation at a minimum to:

22 (1) Adopt measures consistent with best management practices  
23 in order to maintain the value and reasonably foreseeable use of

1 surface lands;

2 (2) Adopt measures consistent with best management practices  
3 in order to control fugitive particulate matter;

4 (3) Plug all wells in accordance with the requirements of  
5 sections twenty-three and twenty-four of article and the rules  
6 promulgated pursuant thereto when such wells become abandoned  
7 pursuant to section nineteen of this article;

8 (4) With respect to surface disposal of cuttings, stabilize  
9 all waste pits, including the use of impervious materials, if  
10 necessary, to assure that any leachate therefrom will not degrade  
11 surface or groundwaters below water quality standards established  
12 pursuant to applicable federal and State law and that the site is  
13 stabilized and revegetated in accordance with the erosion and  
14 sediment control manual provided for in section three of this  
15 article;

16 (5) Establish on regraded areas and all other disturbed areas  
17 a diverse and permanent vegetative cover capable of self-  
18 regeneration and plant succession and at least equal in extent of  
19 cover to the natural vegetation of the area in accordance with the  
20 erosion and sediment control manual provided for in section three  
21 of this article;

22 (6) Protect off-site areas from damages that may result from  
23 oil and gas operations in accordance with best management practices

1 and the erosion and sediment control manual provided for in section  
2 three of this article;

3 (7) Eliminate fire hazards and otherwise eliminate conditions  
4 which constitute a hazard to health and safety of the public;

5 (8) Protect the quantity and the quality of water in surface  
6 and groundwater systems both during and after drilling operations  
7 and during reclamation by: (A) Withdrawing water from surface  
8 waters of the state by methods deemed appropriate by the secretary,  
9 so as to maintain sufficient in-stream flow immediately downstream  
10 of the withdrawal location. In no case shall an operator withdraw  
11 water from ground or surface waters at volumes beyond what the  
12 waters can sustain; (B) Casing, sealing or otherwise managing wells  
13 to keep returned fluids from entering ground and surface waters, in  
14 accordance with the provisions of section twenty-one of this  
15 article; (C) Conducting oil and gas operations using best  
16 management practices so as to prevent additional contributions of  
17 suspended or dissolved solids to streamflow or runoff outside the  
18 permit area, but in no event shall the contributions be in excess  
19 of requirements set by applicable state or federal law; and (D)  
20 Registering all water supply wells with the Division of Oil and Gas  
21 and constructing and plugging all such wells in accordance with the  
22 standards of the Bureau for Public Health set forth in its  
23 legislative rule entitled *Water Well Regulations*. In lieu of



1 plugging, the operator may transfer the well to the surface owner  
2 upon agreement of the parties. All drinking water wells within two  
3 thousand five hundred feet of the water supply well shall be flow  
4 tested by the operator upon request of the drinking well owner  
5 prior to operating the water supply well.

6 (9) With respect to other surface impacts of oil and gas  
7 operations not specified in this subsection, including the  
8 construction of new roads or the improvement or use of existing  
9 roads to gain access to the site of oil and gas drilling activities  
10 and for storage areas, processing areas, shipping areas, and other  
11 areas upon which are sited structures, facilities or other property  
12 or materials resulting from or incident to the activities  
13 associated with oil and gas operations, operate in accordance with  
14 the standards established in this article or the rules promulgated  
15 thereunder and best management practices; and

16 (10) To the extent possible using best management practices,  
17 minimize adverse effects of the operation on fish, aquatic life,  
18 wildlife.

19 (11) In addition to the other requirements of this article, an  
20 operator that drills any well using horizontal drilling methods  
21 shall comply with the following requirements:

22 (A) Identification of water withdrawal locations. Within at  
23 least twenty-four hours, but no more than forty-eight hours, prior

1 to the withdrawal of water, the operator shall identify the  
2 location of withdrawal by latitude and longitude and verify that  
3 sufficient flow exists to protect designated uses of the stream.

4 The operator shall use methods deemed appropriate by the secretary  
5 to determine if sufficient flow is available and must check flows  
6 on a daily basis for the duration of the withdrawal. Any variation  
7 from the methods previously approved by the secretary for  
8 determining if sufficient flow is available must be requested in  
9 writing by the operator.

10 (B) Signage for water withdrawal locations. All water  
11 withdrawal locations and facilities identified in the water  
12 management plan shall be identified with a sign that discloses that  
13 the location is a water withdrawal point and the name and telephone  
14 number of the operator for which the water withdrawn will be  
15 utilized.

16 (C) Record keeping and reporting. For all water used for  
17 hydraulic fracturing of horizontal wells and for flowback water  
18 from hydraulic fracturing activities and produced water from  
19 production activities from horizontal wells, gas well operators  
20 shall comply with the following record keeping and reporting  
21 requirements:

22 (i) For production activities, the following information shall  
23 be recorded and retained by the well operator:

1       (I) The quantity of flowback water from hydraulic fracturing  
2 the well;

3       (II) The quantity of produced water from the well; and

4       (III) The method of management or disposal of the flowback and  
5 produced water.

6       (ii) For transportation activities, the following information  
7 shall be recorded and maintained by the operator:

8       (I) The quantity of water transported;

9       (II) The collection and delivery or disposal locations of  
10 water; and

11       (III) The name of the water hauler.

12       (D) The information maintained pursuant to this subdivision  
13 shall be available for inspection by the department along with  
14 other required permits and records and maintained for three years  
15 after the water withdrawal activity.

16       (E) This subdivision is intended to be consistent with and  
17 does not supersede, revise, repeal or otherwise modify articles  
18 eleven, twelve or twenty-six of this chapter and does not revise,  
19 repeal or otherwise modify the common law doctrine of riparian  
20 rights in West Virginia law.

21 **§22-6-7. Water pollution control permits; powers and duties of the**  
22 **director secretary; penalties.**

23       (a) In addition to a permit for well work, the ~~director~~

1 secretary, after public notice and an opportunity for public  
2 hearing, may either issue a separate permit, general permit or a  
3 permit consolidated with the well work permit for the discharge or  
4 disposition of any pollutant or combination of pollutants into  
5 waters of this state upon condition that such discharge or  
6 disposition meets or will meet all applicable State and federal  
7 water quality standards and effluent limitations and all other  
8 requirements of the ~~director~~ secretary.

9 (b) It ~~shall be~~ is unlawful for any person conducting  
10 activities which are subject to the requirements of this article,  
11 unless that person holds a water pollution control permit therefor  
12 from the ~~director~~ secretary, which is in full force and effect, to:

13 (1) Allow pollutants or the effluent therefrom, produced by or  
14 emanating from any point source, to flow into the water of this  
15 state;

16 (2) Make, cause or permit to be made any outlet, or  
17 substantially enlarge or add to the load of any existing outlet,  
18 for the discharge of pollutants or the effluent therefrom, into the  
19 waters of this state;

20 (3) Acquire, construct, install, modify or operate a disposal  
21 system or part thereof for the direct or indirect discharge or  
22 deposit of treated or untreated pollutants or the effluent  
23 therefrom, into the waters of this state, or any extension to or

1 addition to such disposal system;

2 (4) Increase in volume or concentration any pollutants in  
3 excess of the discharges or disposition specified or permitted  
4 under any existing permit;

5 (5) Extend, modify or add to any point source, the operation  
6 of which would cause an increase in the volume or concentration of  
7 any pollutants discharging or flowing into the waters of the state;

8 (6) Operate any disposal well for the injection or reinjection  
9 underground of any pollutant, including, but not limited to,  
10 liquids or gasses, or convert any well into ~~such~~ a disposal well or  
11 plug or abandon any ~~such~~ disposal well.

12 (c) Notwithstanding any provision of this article or articles  
13 ~~seven, eight, nine, or ten~~ or twenty-one of this chapter to the  
14 contrary, the ~~director~~ secretary shall have the same powers and  
15 duties relating to inspection and enforcement as those granted  
16 under article eleven, chapter twenty-two of this code in connection  
17 with the issuance of any water pollution control permit or any  
18 person required to have ~~such~~ a water pollution control permit.

19 (d) Any person who violates any provision of this section, any  
20 order issued under this section or any permit issued pursuant to  
21 this section or any rule of the ~~director~~ secretary relating to  
22 water pollution or who willfully or negligently violates any  
23 provision of this section or any permit issued pursuant to this

1 section or any rule or order of the ~~director~~ secretary relating to  
2 water pollution or who fails or refuses to apply for and obtain a  
3 permit or who intentionally misrepresents any material fact in an  
4 application, record, report, plan or other document filed or  
5 required to be maintained under this section shall be subject to  
6 the same penalties for ~~such~~ those violations as are provided for in  
7 sections twenty-two and twenty-four, article eleven, chapter  
8 twenty-two of this code: *Provided*, That the provisions of section  
9 twenty-six, article eleven, chapter twenty-two of this code  
10 relating to exceptions to criminal liability shall also apply.

11 All applications for injunction filed pursuant to section  
12 twenty-two, article eleven, chapter twenty-two of the code shall  
13 take priority on the docket of the circuit court in which pending,  
14 and shall take precedence over all other civil cases.

15 (e) Any water pollution control permit issued pursuant to this  
16 section or any order issued in connection with ~~such~~ a permit for  
17 the purpose of implementing the "national pollutant discharge  
18 elimination system" established under the federal Clean Water Act  
19 shall be issued by the ~~chief of the office of water resources of~~  
20 ~~the division in consultation with the chief of the office of oil~~  
21 ~~and gas of the division~~ secretary and shall be appealable to the  
22 environmental quality board pursuant to the provisions of section  
23 twenty-five, article eleven, chapter twenty-two and section seven,

1 article one, chapter twenty-two-b of this code.

2 **§22-6-8. Permits not to be on flat well royalty leases;**  
3 **legislative findings and declarations; permit**  
4 **requirements.**

5 (a) The Legislature hereby finds and declares:

6 (1) That a significant portion of the oil and gas underlying  
7 this state is subject to development pursuant to leases or other  
8 continuing contractual agreements wherein the owners of ~~such~~ the  
9 oil and gas are paid upon a royalty or rental basis known in the  
10 industry as the annual flat well royalty basis, in which the  
11 royalty is based solely on the existence of a producing well, and  
12 thus is not inherently related to the volume of the oil and gas  
13 produced or marketed;

14 (2) That continued exploitation of the natural resources of  
15 this state in exchange for such wholly inadequate compensation is  
16 unfair, oppressive, works an unjust hardship on the owners of the  
17 oil and gas in place, and unreasonably deprives the economy of the  
18 State of West Virginia of the just benefit of the natural wealth of  
19 this state;

20 (3) That a great portion, if not all, of such leases or other  
21 continuing contracts based upon or calling for an annual flat well  
22 royalty have been in existence for a great many years and were  
23 entered into at a time when the techniques by which oil and gas are

1 currently extracted, produced or marketed were not known or  
2 contemplated by the parties, nor was it contemplated by the parties  
3 that oil and gas would be recovered or extracted or produced or  
4 marketed from the depths and horizons currently being developed by  
5 the well operators;

6 (4) That while being fully cognizant that the provisions of  
7 section 10, article I of the United States Constitution and of  
8 section 4, article III of the Constitution of West Virginia,  
9 proscribe the enactment of any law impairing the obligation of a  
10 contract, the Legislature further finds that it is a valid exercise  
11 of the police powers of this state and in the interest of the State  
12 of West Virginia and in furtherance of the welfare of its citizens,  
13 to discourage as far as Constitutionally possible the production  
14 and marketing of oil and gas located in this state under the type  
15 of leases or other continuing contracts described above.

16 (b) In the light of the foregoing findings, the Legislature  
17 hereby declares that it is the policy of this state, to the extent  
18 possible, to prevent the extraction, production or marketing of oil  
19 or gas under a lease or leases or other continuing contract or  
20 contracts providing a flat well royalty or any similar provisions  
21 for compensation to the owner of the oil and gas in place, which is  
22 not inherently related to the volume of oil or gas produced or  
23 marketed, and toward these ends, the Legislature further declares



1 that it is the obligation of this state to prohibit the issuance of  
2 any permit required by it for the development of oil or gas where  
3 the right to develop, extract, produce or market the same is based  
4 upon ~~such~~ flat well royalty leases or other continuing contractual  
5 agreements.

6 (c) In addition to any requirements contained in this article  
7 with respect to the issuance of any permit required for the  
8 drilling, redrilling, deepening, fracturing, stimulating,  
9 pressuring, converting, combining or physically changing to allow  
10 the migration of fluid from one formation to another, no such  
11 permit shall be hereafter issued unless the lease or leases or  
12 other continuing contract or contracts by which the right to  
13 extract, produce or market the oil or gas is filed with the permit  
14 application. ~~for such permit.~~ In lieu of filing the lease or  
15 leases or other continuing contract or contracts, the applicant for  
16 a permit described herein may file the following:

17 (1) A brief description of the tract of land including the  
18 district and county wherein the tract is located;

19 (2) The identification of all parties to all leases or other  
20 continuing contractual agreements by which the right to extract,  
21 produce or market the oil or gas is claimed;

22 (3) The book and page number wherein each ~~such~~ lease or  
23 contract by which the right to extract, produce or market the oil

1 or gas is recorded; and

2 (4) A brief description of the royalty provisions of each ~~such~~  
3 lease or contract.

4 (d) Unless the provisions of subsection (e) are met, no ~~such~~  
5 permit shall be ~~hereafter~~ issued after this article takes effect  
6 for the drilling of a new oil or gas well or for the redrilling,  
7 deepening, fracturing, stimulating, pressuring, converting,  
8 combining or physically changing to allow the migration of fluid  
9 from one formation to another, of an existing oil or gas production  
10 well, where or if the right to extract, produce or market the oil  
11 or gas is based upon a lease or leases or other continuing contract  
12 or contracts providing for flat well royalty or any similar  
13 provision for compensation to the owner of the oil or gas in place  
14 which is not inherently related to the volume of oil and gas so  
15 extracted, produced and marketed.

16 (e) To avoid the permit prohibition of subsection (d), the  
17 applicant may file with ~~such~~ the application an affidavit which  
18 certifies that the affiant is authorized by the owner of the  
19 working interest in the well to state that it shall tender to the  
20 owner of the oil or gas in place not less than one-eighth of the  
21 total amount paid to or received by or allowed to the owner of the  
22 working interest at the wellhead for the oil or gas so extracted,  
23 produced or marketed before deducting the amount to be paid to or

1 set aside for the owner of the oil or gas in place<sup>7</sup> on all such oil  
2 or gas to be extracted, produced or marketed from the well. If  
3 ~~such that~~ affidavit ~~be~~ is filed with ~~such the~~ application, then  
4 ~~such the~~ application for permit shall be treated as if ~~such the~~  
5 lease or leases or other continuing contract or contracts comply  
6 with the provisions of this section.

7 (f) The owner of the oil or gas in place shall have a cause of  
8 action to enforce the owner's rights established by this section.

9 (g) The provisions of this section shall not affect or apply  
10 to any lease or leases or other continuing contract or contracts  
11 for the underground storage of gas or any well utilized in  
12 connection therewith or otherwise subject to the provisions of  
13 article nine of this chapter.

14 (h) The ~~director~~ secretary shall enforce this requirement  
15 ~~irrespective~~ regardless of when the lease or other continuing  
16 contract was executed.

17 (i) The provisions of this section shall not adversely affect  
18 any rights to free gas.

19 **§22-6-9. Notice to property owners.**

20 (a) Prior to filing a permit application, the operator shall  
21 provide notice to the surface owner at least seventy-two hours but  
22 no more than forty-five days prior to entering the surface tract to  
23 conduct any plat surveys required pursuant to section twelve of

1 this article.

2       ~~(a)~~ (b) No later than the filing date of the application, the  
3 applicant for a permit for any well work or for a certificate of  
4 approval for the construction of an impoundment shall deliver, by  
5 personal service or by ~~certified mail, return receipt requested~~  
6 registered or certified mail or by any method of delivery that  
7 requires a receipt or signature confirmation, copies of the  
8 application, well plat, and erosion and sediment control plan  
9 required by section ~~six~~ three of this article to each of the  
10 following persons:

11       (1) The owners of record of the surface of the tract on which  
12 the well is or is proposed to be located; and

13       (2) The owners of record of the surface tract or tracts  
14 overlying the oil and gas leasehold being developed by the proposed  
15 well work, if ~~such~~ the surface tract is to be utilized for roads or  
16 other land disturbance as described in the erosion and sediment  
17 control plan submitted pursuant to section ~~six~~ three of this  
18 article; and

19       (3) The coal owner, operator or lessee, in the event the tract  
20 of land on which the well proposed to be drilled is located is  
21 known to be underlain by one or more coal seams; and

22       (4) The owners of record of the surface tract or tracts  
23 overlying the oil and gas leasehold being developed by the proposed

1 well work, if the surface tract is to be utilized for the  
2 placement, construction, enlargement, alteration, repair, removal  
3 or abandonment of any impoundment as described in section five of  
4 this article; and

5 (5) The operator of any storage field within which the  
6 proposed well work activity is to take place.

7 ~~(b)~~ (c) If more than three tenants in common or other coowners  
8 of interests described in subsection (a) of this section hold  
9 interests in ~~such~~ the lands, the applicant may serve the documents  
10 required upon the person described in the records of the sheriff  
11 required to be maintained pursuant to section eight, article one,  
12 chapter eleven-a of this code, or publish in the county in which  
13 the well is located or is proposed to be located a Class II legal  
14 advertisement as described in section two, article three, chapter  
15 fifty-nine of this code, containing such notice and information as  
16 the ~~director~~ secretary shall prescribe by rule, with the first  
17 publication date being at least ten days prior to the filing of the  
18 permit application: *Provided*, That all owners occupying the tracts  
19 where the well work is or is proposed to be located ~~at~~ on the  
20 filing date of the permit application shall receive actual service  
21 of the documents required by subsection (a) of this section.

22 ~~(c)~~ (d) Materials served upon persons described in subsections  
23 ~~(a)~~ (b) and ~~(b)~~ (c) of this section shall contain a statement of

1 the methods and time limits for filing comments, who may file  
2 comments, ~~and~~ the name and address of the ~~director~~ secretary for  
3 the purpose of filing comments and obtaining additional  
4 information, and a statement that ~~such~~ those persons may request,  
5 at the time of submitting comments, notice of the permit decision  
6 and a list of persons qualified to test water as provided in this  
7 section.

8 ~~(d)~~ (e) Any person entitled to submit comments shall also be  
9 entitled to receive a copy of the permit as issued or a copy of the  
10 order modifying or denying the permit if ~~such~~ that person requests  
11 ~~the receipt thereof~~ of them as a part of ~~the~~ his or her comments  
12 concerning ~~said~~ the permit application.

13 (f) The surface owner and the coal owner, operator or lessee  
14 shall also be entitled to receive notice within seven days but no  
15 less than two days before commencement that well work or site  
16 preparation work that involves any disturbance of land is expected  
17 to commence, if that person requests receipt of that notice as a  
18 part of his or her comments concerning the permit application.

19 ~~(e)~~ (g) Persons entitled to notice may contact the ~~district~~  
20 ~~office of the division~~ department to ascertain the names and  
21 locations of water testing laboratories in the subject area capable  
22 and qualified to test water supplies in accordance with standard  
23 accepted methods. In compiling ~~such~~ that list of names the ~~division~~

1 department shall consult with the state Bureau of Public Health and  
2 local health departments.

3 **§22-6-10. Procedure for filing comments; certification of**  
4 **notice.**

5 (a) All persons described in subsections ~~(a) and (b)~~ (b) and  
6 (c), section nine of this article may file comments with the  
7 ~~director~~ secretary as to the location or construction of the  
8 applicant's proposed well work within ~~fifteen~~ thirty days after the  
9 administratively complete application is filed with the ~~director~~  
10 secretary.

11 (b) Prior to the issuance of any permit for well work, the  
12 applicant shall certify to the ~~director~~ secretary that the  
13 requirements of section nine of this article have been completed by  
14 the applicant. Such certification may be by affidavit of personal  
15 service or the return receipt card, or other postal receipt ~~for~~  
16 ~~certified mailing~~ indicating that the notice provided for in  
17 section nine of this article was conducted.

18 ~~§22-6-11. Review of application; issuance of permit in the absence~~  
19 ~~of objections; copy of permits to county assessor.~~

20 ~~The director shall review each application for a well work~~  
21 ~~permit and shall determine whether or not a permit shall be issued.~~

22 ~~No permit shall be issued less than fifteen days after the~~  
23 ~~filing date of the application for any well work except plugging or~~

1 ~~replugging; and no permit for plugging or replugging shall be~~  
2 ~~issued less than five days after the filing date of the application~~  
3 ~~except a permit for plugging or replugging a dry hole: *Provided,*~~  
4 ~~That if the applicant certifies that all persons entitled to notice~~  
5 ~~of the application under the provisions of this article have been~~  
6 ~~served in person or by certified mail, return receipt requested,~~  
7 ~~with a copy of the well work application, including the erosion and~~  
8 ~~sediment control plan, if required, and the plat required by~~  
9 ~~section six of this article, and further files written statements~~  
10 ~~of no objection by all such persons, the director may issue the~~  
11 ~~well work permit at any time.~~

12 ~~The director may cause such inspections to be made of the~~  
13 ~~proposed well work location as to assure adequate review of the~~  
14 ~~application. The permit shall not be issued, or shall be~~  
15 ~~conditioned including conditions with respect to the location of~~  
16 ~~the well and access roads prior to issuance if the director~~  
17 ~~determines that:~~

18 ~~(1) The proposed well work will constitute a hazard to the~~  
19 ~~safety of persons; or~~

20 ~~(2) The plan for soil erosion and sediment control is not~~  
21 ~~adequate or effective; or~~

22 ~~(3) Damage would occur to publicly owned lands or resources;~~  
23 ~~or~~



1       ~~(4) The proposed well work fails to protect fresh water~~  
2 ~~sources or supplies.~~

3       ~~The director shall promptly review all comments filed. If~~  
4 ~~after review of the application and all comments received, the~~  
5 ~~application for a well work permit is approved, and no timely~~  
6 ~~objection or comment has been filed with the director or made by~~  
7 ~~the director under the provisions of section fifteen, sixteen or~~  
8 ~~seventeen of this article, the permit shall be issued, with~~  
9 ~~conditions, if any. Nothing in this section shall be construed to~~  
10 ~~supersede the provisions of sections six, twelve, thirteen,~~  
11 ~~fourteen, fifteen, sixteen and seventeen of this article.~~

12       ~~The director shall mail a copy of the permit as issued or a~~  
13 ~~copy of the order denying a permit to any person who submitted~~  
14 ~~comments to the director concerning said permit and requested such~~  
15 ~~copy.~~

16       ~~Upon the issuance of any permit pursuant to the provisions of~~  
17 ~~this article, the director shall transmit a copy of such permit to~~  
18 ~~the office of the assessor for the county in which the well is~~  
19 ~~located.~~

20 **§22-6-11. Inspections; monitoring; right of entry; inspection of**  
21 **records; identification signs.**

22       (a) The secretary shall cause to be made inspections of oil  
23 and gas operations as are necessary to effectively enforce the

1 requirements of this article, and for those purposes the secretary  
2 or his or her authorized representative shall, without advance  
3 notice and upon presentation of appropriate credentials: (A) Have  
4 the right of entry to, upon or through oil and gas operations or  
5 any premises in which any records required to be maintained  
6 pursuant to this chapter are located; and (B) At reasonable times  
7 and without delay, have access to and copy any records and inspect  
8 any monitoring equipment or method of operation required by this  
9 chapter of the code.

10 (b) For the purpose of enforcement under this article, in the  
11 administration and enforcement of any permit under this article or  
12 for determining whether any person is in violation of any  
13 requirement of this article, the secretary shall, at a minimum,  
14 require any operator to:

15 (1) Establish and maintain appropriate records;

16 (2) Make appropriate reports to the department; and

17 (3) Provide any other information relative to oil and gas  
18 operations as the secretary finds reasonable and necessary.

19 (c) Inspections of oil and gas operations shall be made on an  
20 irregular basis without prior notice to the operator or the  
21 operator's agents or employees, except for necessary on-site  
22 meetings with the operator. The inspections shall include the  
23 filing of inspection reports adequate to enforce the requirements,

1 terms, and purposes of this article.

2 (d) Each operator shall maintain at the well site a clearly  
3 visible monument which sets forth the name, business address and  
4 telephone number of the operator, and the API number of the well.

5 (e) Copies of any records, reports, inspection materials or  
6 information obtained pursuant to this article by the secretary  
7 shall be made available to the public so that they are conveniently  
8 available to residents in the areas of oil and gas operations,  
9 unless specifically exempted by this article or the West Virginia  
10 Freedom of Information Act as set forth in article one, chapter  
11 twenty-nine-b of this code.

12 (f) Whenever on the basis of available information, including  
13 reliable information from any person, the secretary has cause to  
14 believe that any person is in violation of this article or article  
15 eight, nine, ten, eleven or twenty-one of this chapter or any  
16 permit condition or rule promulgated thereunder, the secretary  
17 shall immediately order inspection of the operation at which the  
18 alleged violation is occurring, unless the information is available  
19 as a result of a prior state inspection.

20 (g) When requested by the operator, the secretary may provide  
21 for a compliance conference with his or her authorized  
22 representative to review the compliance status of any oil and gas  
23 operation. Any such conference may not constitute an inspection as

1 defined in this section.

2 **§22-6-12. Plats prerequisite to drilling or fracturing wells;**  
3 **preparation and contents; notice and information**  
4 **furnished to coal operators, owners or lessees;**  
5 **issuance of permits; performance bonds or securities**  
6 **in lieu thereof; bond forfeiture.**

7 (a) Before drilling for oil or gas, or before fracturing or  
8 stimulating a well on any tract of land, the well operator shall  
9 have a plat prepared by a ~~licensed land~~ professional surveyor or  
10 registered professional engineer showing the district and county in  
11 which the tract of land is located, the name and acreage of the  
12 same, the names of the owners of adjacent tracts, the proposed or  
13 actual location of the well determined by survey, the courses and  
14 distances of ~~such~~ the location from two permanent points or  
15 landmarks on ~~said~~ the tract, all mineral tract boundaries within  
16 the scope of the plat, and the number to be given the well. In the  
17 event the tract of land on which the ~~said~~ well proposed to be  
18 drilled or fractured is located is known to be underlain by one or  
19 more coal seams, copies of the plat shall be forwarded by  
20 registered or certified mail or by any method of delivery that  
21 requires a receipt or signature confirmation to each and every coal  
22 operator operating ~~said~~ coal seams beneath ~~said~~ the tract of land

1 who has mapped the same and filed ~~such~~ the maps with the Office of  
2 Miners' Health, Safety and Training in accordance with chapter  
3 twenty-two-a of this code, and the coal seam owner of record and  
4 lessee of record, if any, if ~~said~~ the owner or lessee has recorded  
5 the declaration or is owner or lessee of record as provided in  
6 section thirty-six of this article and if ~~said~~ the owner or lessee  
7 is not yet operating ~~said~~ the coal seams beneath ~~said~~ the tract of  
8 land. With each of ~~such~~ the plats there shall be enclosed a notice  
9 (form for which shall be furnished on request by the secretary)  
10 addressed to the secretary and to each ~~such~~ coal operator, owner  
11 and lessee, if any, at their respective addresses, informing them  
12 that ~~such~~ the plat and notice are being mailed to them respectively  
13 by registered or certified mail or by any method of delivery that  
14 requires a receipt or signature confirmation, pursuant to the  
15 requirements of this article.

16 (b) If no objections are made or ~~are~~ found by the secretary to  
17 ~~such~~ the proposed location or proposed fracturing within ~~fifteen~~  
18 thirty days from receipt of ~~such~~ the plat and notice by the  
19 secretary, ~~the same~~ they shall be filed and become a permanent  
20 record of ~~such~~ the location or fracturing subject to inspection at  
21 any time by any interested person, and the secretary may forthwith  
22 issue to the well operator a permit reciting the filing of ~~such~~ the  
23 plat, that no objections have been made by the coal operators,

1 owners, and lessees, if any, or found thereto by the secretary, and  
2 authorizing the well operator to drill at ~~such the~~ location, or to  
3 fracture the well. Unless the secretary has objections to ~~such the~~  
4 proposed location or proposed fracturing or stimulating, ~~such the~~  
5 permit may be issued prior to the expiration of ~~such fifteen the~~  
6 thirty-day period upon the ~~obtaining by the~~ well operator of  
7 obtaining the written consent ~~in writing~~ of the coal ~~operator or~~  
8 operators, owners, and lessees, if any, to whom copies of the plat  
9 and notice ~~shall have been~~ were mailed as herein required, and upon  
10 presentation of ~~such the~~ written consent to the secretary. The  
11 notice above provided for may be given to the coal operator by  
12 delivering or mailing it ~~by registered or certified mail as~~  
13 provided for above to any agent or superintendent in actual charge  
14 of the mines.

15 (c) A permit to drill, ~~or to~~ fracture or stimulate an oil or  
16 gas well shall not be issued unless the application therefor is  
17 accompanied by a bond as provided in section twenty-six of this  
18 article.

19 **§22-6-13. Notice to coal operators, owners or lessees and director**  
20 **secretary of intention to fracture certain other**  
21 **wells; contents of ~~such the~~ notice; bond; permit**  
22 **required; appeal from order of issuance or refusal of**  
23 **permit to drill or fracture; procedure.**

1        (a) Before fracturing any well the well operator shall, by  
2 registered or certified mail or by any method of delivery that  
3 requires a receipt or signature confirmation, forward a notice of  
4 intention to fracture ~~such the~~ well to the ~~director~~ secretary and  
5 to each and every coal operator operating coal seams beneath ~~said~~  
6 the tract of land who has mapped ~~the same~~ them and filed ~~such the~~  
7 maps with the Office of Miners' Health, Safety and Training in  
8 accordance with chapter twenty-two-a of this code, and the coal  
9 seam owner and lessee, if any, if ~~said the~~ owner of record or  
10 lessee of record has recorded the declaration or is the owner or  
11 lessee of record as provided in section thirty-six of this article  
12 and if ~~said the~~ owner or lessee is not yet operating ~~said the~~ coal  
13 seams beneath ~~said the~~ tract of land.

14        (b) The notice shall be addressed to the ~~director~~ secretary  
15 and to each ~~such~~ coal operator at their respective addresses, shall  
16 contain the number of the drilling permit for ~~such the~~ well and  
17 ~~such~~ any other information as may be required by the ~~director~~  
18 secretary to enable the ~~division~~ department and the coal operators  
19 to locate and identify ~~such the~~ well and shall inform them that  
20 ~~such~~ notice is being ~~mailed~~ sent to them, respectively, by  
21 registered or certified mail or by any method of delivery that  
22 requires a receipt or signature confirmation, pursuant to the  
23 requirements of this article. The form for ~~such the~~ notice of

1 intention shall be furnished on request by the ~~director~~ secretary.

2       (c) If no objections are made or ~~are~~ found by the ~~director~~  
3 secretary to ~~such the~~ proposed fracturing within ~~fifteen~~ thirty  
4 days from receipt of ~~such the~~ notice by the ~~director~~ secretary, the  
5 ~~same~~ it shall be filed and become a permanent record of ~~such the~~  
6 fracturing, subject to inspection at any time by any interested  
7 person, and the ~~director~~ secretary shall forthwith issue to the  
8 well operator a permit reciting the filing of ~~such the~~ notice, that  
9 no objections have been made by the coal operators or found ~~thereto~~  
10 by the ~~director~~ secretary, and authorizing the well operator to  
11 fracture ~~such the~~ well. Unless the ~~director~~ secretary has  
12 objections to ~~such the~~ proposed fracturing, ~~such the~~ permit ~~shall~~  
13 may be issued prior to the expiration of ~~such fifteen~~ the thirty-  
14 day period upon the ~~obtaining by the~~ well operator of ~~the~~ obtaining  
15 the written consent ~~in writing~~ of the coal ~~operator or~~ operators,  
16 owners or lessees, if any, to whom notice of intention to fracture  
17 ~~shall have been mailed~~ was sent as herein required by this article  
18 and upon presentation of ~~such the~~ written consent to the ~~director~~  
19 secretary. The notice above provided for may be given to the coal  
20 operator by delivering or mailing it by registered or certified  
21 mail or by any method of delivery that requires a receipt or  
22 signature confirmation as above to any agent or superintendent in  
23 actual charge of mines.



1       (d) Any party to the proceeding provided for in this section  
2 or section seven, article eight, chapter twenty-two-c of this code  
3 adversely affected by the issuance of a drilling permit or to the  
4 issuance of a fracturing permit or the refusal of the secretary to  
5 grant a drilling permit or fracturing permit is entitled to  
6 judicial review thereof. All of the pertinent provisions of  
7 section four, article five, chapter twenty-nine-a of this code  
8 shall apply to and govern the judicial review with like effect as  
9 if the provisions of that section four were set forth *in extenso* in  
10 this section.

11       (e) The judgment of the circuit court shall be final unless  
12 reversed, vacated or modified on appeal to the Supreme Court of  
13 Appeals in accordance with the provisions of section one, article  
14 six, chapter twenty-nine-a of this code.

15 **§22-6-14. Plats prerequisite to introducing liquids or waste into**  
16 **wells; preparation and contents; notice and**  
17 **information furnished to coal operators, owners or**  
18 **lessees and director secretary; issuance of permits;**  
19 **performance bonds or security in lieu thereof; appeal**  
20 **from order of issuance or refusal of permit for**  
21 **drilling location for introduction of liquids or waste**  
22 **or from conditions of converting procedure.**

1 (a) Before drilling a well for the introduction of liquids for  
2 the purposes provided for in section twenty-five of this article or  
3 for the introduction of liquids for the disposal of pollutants or  
4 the effluent therefrom on any tract of land or before converting an  
5 existing well for ~~such~~ those purposes, the well operator shall have  
6 a plat prepared by a registered professional engineer or ~~licensed~~  
7 ~~land~~ professional surveyor showing the district and county in which  
8 the tract of land is located, the name and acreage of the same, the  
9 names of the owners of all adjacent tracts, the proposed or actual  
10 location of the well or wells determined by a survey, the courses  
11 and distances of ~~such~~ the location from two permanent points of  
12 land marked on ~~said~~ the tract, all mineral tract boundaries within  
13 the scope of the plat, and the number to be given to the well and  
14 shall forward by registered or certified mail or by any method of  
15 delivery that requires a receipt or signature confirmation the  
16 original and one copy of the plat to the ~~director~~ secretary. In  
17 addition, the well operator shall provide the following information  
18 on the plat or by way of attachment thereto to the ~~director~~  
19 secretary in the manner and form prescribed by ~~the director's~~ rules  
20 promulgated by the secretary: (1) The location of all wells,  
21 abandoned or otherwise located within the area to be affected; (2)  
22 Where available, the casing records of all ~~such~~ those wells; (3)  
23 Where available, the drilling log of all ~~such~~ those wells; (4) The

1 maximum pressure to be introduced; (5) The geological formation  
2 into which ~~such~~ the liquid or pressure is to be introduced; (6) A  
3 general description of the liquids to be introduced; (7) The  
4 location of all water-bearing horizons above and below the  
5 geological formation into which ~~such~~ the pressure, liquid or waste  
6 is to be introduced; and (8) ~~Such~~ Any other information ~~as~~ the  
7 ~~director~~ secretary ~~by rule~~ may require.

8 (b) In the event the tract of land on which ~~said~~ the well  
9 proposed to be drilled or converted for the purposes provided for  
10 in this section is located is known to be underlaid with coal  
11 seams, copies of the plat and all information required by this  
12 section shall be forwarded by the well operator by registered or  
13 certified mail or by any method of delivery that requires a receipt  
14 or signature confirmation to each and every coal operator operating  
15 coal seams beneath ~~said~~ the tract of land who has mapped the same  
16 and filed ~~such~~ those maps with the Office of Miners' Health, Safety  
17 and Training in accordance with chapter twenty-two-a of this code  
18 and the coal seam owner of record and lessee of record, if any, if  
19 ~~said~~ the owner or lessee has recorded the declaration or is the  
20 owner or lessee of record as provided in section thirty-six of this  
21 article and if ~~said~~ the owner or lessee is not yet operating ~~said~~  
22 the seams beneath ~~said~~ the tract of land. With each of ~~such~~ the  
23 plats, there shall be enclosed a notice (form for which shall be

1 furnished on request by the ~~director~~ secretary) addressed to the  
2 ~~director~~ secretary and to each ~~such~~ coal operator, owner or lessee,  
3 if any, at their respective addresses, informing them that ~~such~~ the  
4 plat and notice are being mailed to them, respectively, by  
5 registered or certified mail or by any method of delivery that  
6 requires a receipt or signature confirmation, pursuant to the  
7 requirements of this section.

8 (c) If no objections are made by any ~~such~~ coal operator, owner  
9 or lessee or the ~~director~~ secretary, ~~such~~ the proposed drilling or  
10 converting of the well or wells for the purposes provided for in  
11 this section within thirty days from ~~the~~ receipt of ~~such~~ the plat  
12 and notice by the ~~director~~ secretary, ~~the same~~ they shall be filed  
13 and become a permanent record of ~~such~~ the location or well, subject  
14 to inspection at any time by any interested person, and the  
15 ~~director~~ secretary may after public notice and opportunity to  
16 comment, issue ~~such~~ a permit authorizing the well operator to drill  
17 at ~~such~~ the location or convert ~~such~~ an existing well or wells for  
18 the purposes provided for in this section. The notice above  
19 provided for may be given to the coal operator by delivering or  
20 mailing it ~~by registered or certified mail~~ as provided for above to  
21 any agent or superintendent in actual charge of the mines.

22 (d) A permit to drill a well or wells or convert an existing  
23 well or wells for the purposes provided for in this section shall

1 not be issued until all of the bonding provisions required by ~~the~~  
2 ~~provisions of~~ section twelve of this article have been fully  
3 complied with, and all ~~such~~ bonding provisions shall apply to all  
4 wells drilled or converted for the purposes provided for in this  
5 section as if ~~such~~ those wells had been drilled for the purposes  
6 provided for in section twelve of this article, except that ~~such~~  
7 the bonds shall be conditioned upon full compliance with all laws  
8 and rules relating to the drilling of a well or the converting of  
9 an existing well for the purposes provided for in ~~said~~ section  
10 twenty-five or introducing of liquids for the disposal of  
11 pollutants including the redrilling, deepening, casing, plugging or  
12 abandonment of all ~~such~~ those wells.

13 (e) Any party to the proceeding provided for in this section  
14 adversely affected by the order of issuance of a drilling permit or  
15 to the issuance of a fracturing permit or the refusal of the  
16 secretary to grant a drilling permit or fracturing permit is  
17 entitled to judicial review thereof. All of the pertinent  
18 provisions of section four, article five, chapter twenty-nine-a of  
19 this code shall apply to and govern that judicial review with like  
20 effect as if the provisions of that section four were set forth in  
21 extenso in this section.

22 (f) The judgment of the circuit court shall be final unless  
23 reversed, vacated or modified on appeal to the Supreme Court of

1 Appeals in accordance with the provisions of section one, article  
2 six, chapter twenty-nine-a of this code.

3 **§22-6-15. Objections to proposed drilling of deep wells and oil**  
4 **wells; objections to fracturing; notices and hearings;**  
5 **agreed locations or conditions; indication of changes**  
6 **on plats, etc.; issuance of permits.**

7 (a) When a proposed deep well drilling site or oil well  
8 drilling site ~~or any site~~ is above a seam or seams of coal, then  
9 the coal ~~operator operating said coal seams beneath the tract of~~  
10 ~~land, or the coal seam owner or lessee, if any, if said owner or~~  
11 ~~lessee is not yet operating said coal seams~~ owner, operator or  
12 lessee, whether or not the coal owner, operator or lessee is  
13 operating the coal seams, may within ~~fifteen~~ thirty days ~~from the~~  
14 of receipt by the ~~director~~ secretary of the plat and notice  
15 required by section twelve of this article or within ~~fifteen~~ thirty  
16 days ~~from the~~ of receipt by the ~~director~~ secretary of notice  
17 required by section thirteen of this article, file objections in  
18 writing ~~(forms for which will be furnished by the director on~~  
19 ~~request)~~ to ~~such~~ the proposed drilling or fracturing with the  
20 ~~director~~ secretary, setting out therein as ~~definitely~~ specifically  
21 as is reasonably possible the ground or grounds on which ~~such~~ the  
22 objections are based.

23 (b) If any objection to the proposed drilling is filed or if

1 ~~any objection is~~ made by the ~~director~~ secretary, the ~~director~~  
2 secretary shall notify the well operator of the character of the  
3 objections and by whom made and fix a time and place, not less than  
4 ~~fifteen~~ thirty days from the end of ~~said fifteen~~ the thirty-day  
5 period, at which ~~such~~ the objections will be considered. ~~of which~~  
6 At that time and place the well operator and all objecting coal  
7 operators, owners or lessees, if any, shall be given at least ~~ten~~  
8 fifteen days' written notice by the ~~director~~, secretary by  
9 registered or certified mail or by any method of delivery that  
10 requires a receipt or signature confirmation and summoned to  
11 appear. At the time and place so fixed, the well operator and the  
12 objecting coal operators, owners or lessees, if any, or ~~such~~ any of  
13 them ~~as~~ who are present or represented, shall proceed to consider  
14 the objections. In the case of proposed drilling, ~~such~~ the parties  
15 present or represented may agree upon either the location as made  
16 or ~~so~~ moved so as to satisfy all objections and meet the approval  
17 of the ~~director~~ secretary. ~~and any~~ Any change in the original  
18 location so agreed upon and approved by the ~~director~~ secretary  
19 shall be indicated on ~~said~~ the plat on file with the ~~director~~  
20 secretary, and the distance and direction of the new location from  
21 the original location shall be shown, and as so altered, the plat  
22 shall be filed and become a permanent record. ~~and in~~ In the case of  
23 proposed fracturing, ~~such~~ the parties present or represented may

1 agree upon conditions under which the well is to be fractured which  
2 will protect life and property and which will satisfy all  
3 objections and meet the approval of the ~~director~~ secretary, at  
4 which time the plat and notice required by section twelve or the  
5 notice required by section thirteen, as the case may be, shall be  
6 filed and become a permanent record. Whereupon the ~~director~~  
7 secretary shall ~~forthwith~~ immediately issue to the well operator a  
8 drilling or fracturing permit, as the case may be, reciting the  
9 filing of the plat and notice required by ~~said~~ section twelve or  
10 the notice required by ~~said~~ section thirteen, as the case may be,  
11 that at a hearing duly held a location as shown on the plat or the  
12 conditions under which the fracturing is to take place for the  
13 protection of life and property were agreed upon and approved, and  
14 that the well operator is authorized to drill at ~~such~~ the location  
15 or to fracture at the site shown on ~~such~~ the plat or to fracture  
16 the well identified in the notice required by section thirteen, as  
17 the case may be.

18 ~~(b)~~ (c) In the event the well operator and the objecting coal  
19 operators, owners or lessees, if any, or ~~such as~~ any who are  
20 present or represented at ~~such~~ the hearing are unable to agree upon  
21 a drilling location or upon a drilling location that meets the  
22 approval of the ~~director~~ secretary, then the ~~director~~ secretary  
23 shall proceed to hear the evidence and testimony in accordance with



1 sections one and two, article five, chapter twenty-nine-a of this  
2 code, except where such provisions are inconsistent with this  
3 article. The ~~director~~ secretary shall take into consideration in  
4 arriving at his or her decision:

5 (1) Whether the drilling location is above or in close  
6 proximity to any mine opening or shaft, entry, travelway, airway,  
7 haulageway, drainageway or passageway, loadout, stockpile, pit,  
8 highwall, active surface mining, or to any proposed extension  
9 thereof in any operated or abandoned or operating coal mine or coal  
10 mines already surveyed and platted, but not yet being operated;

11 (2) Whether the proposed drilling can reasonably be done  
12 through an existing or planned pillar of coal, or in close  
13 proximity to an existing well or pillar of coal, taking into  
14 consideration the surface topography;

15 (3) Whether a well can be drilled safely, taking into  
16 consideration the dangers from creeps, squeezes or other  
17 disturbances due to the extraction of coal; and

18 (4) The extent to which the proposed drilling location  
19 unreasonably interferes with the safe recovery of coal, oil and  
20 gas.

21 At the close of the hearing or within ten days thereafter the  
22 ~~director~~ secretary shall issue an order:

23 (1) Refusing to issue a permit;

1 (2) Issuing a permit for the proposed drilling location; ~~or~~  
2 (3) Issuing a permit for a drilling location different from  
3 that requested by the well operator; or  
4 (4) Placing other limitations on the drilling location or  
5 process as the secretary finds necessary to protect human health or  
6 safety or the environment.

7 The order shall state with particularity the reasons for the  
8 ~~director's~~ secretary's order and shall be mailed by registered or  
9 certified mail or by any method of delivery that requires receipt  
10 or signature confirmation to the parties present or represented at  
11 ~~such~~ the hearing. If the ~~director~~ secretary has ruled that a  
12 permit will be issued, the ~~director~~ secretary shall issue a permit  
13 effective ten days after ~~such~~ the order is mailed, except that for  
14 good cause shown, the ~~director~~ secretary may stay the issuance of  
15 a permit for a period not to exceed thirty days.

16 If a permit is issued, the ~~director~~ secretary shall indicate  
17 the new drilling location on the plat on file and shall number and  
18 keep an index of and docket each plat and notice received by mail  
19 as provided in section twelve of this article and each notice  
20 mailed as provided in section thirteen of this article, entering  
21 into ~~such~~ the docket the name of the well operator and the names  
22 and addresses of all persons notified, the dates of hearings and  
23 all actions taken by the ~~director~~ secretary. The ~~director~~

1 secretary shall also prepare a record of the proceedings, which  
2 record shall include all applications, plats and other documents  
3 filed with the ~~director~~ secretary, all notices given and proof of  
4 service thereof, all orders issued, all permits issued and a  
5 transcript of the hearing. The record prepared by the ~~director~~  
6 secretary shall be open to inspection by the public.

7       ~~(c)~~ (d) In the event the well operator and the objecting coal  
8 operators, owners or lessees, if any, or ~~such as~~ any who are  
9 present or represented at ~~such~~ the hearing are unable to agree upon  
10 the conditions under which the well is to be fractured so as to  
11 protect life and property or upon conditions of fracturing that  
12 meet with the approval of the ~~director~~ secretary, then the ~~director~~  
13 secretary shall proceed to hear the evidence and testimony in  
14 accordance with sections one and two, article five, chapter twenty-  
15 nine-a of this code, except where such provisions are inconsistent  
16 with this article.

17       The ~~director~~ secretary shall take into consideration whether  
18 the well can be fractured safely, taking into consideration the  
19 dangers from creeps, squeezes or other disturbances.

20       At the close of the hearing, or within ten days thereafter,  
21 the ~~director~~ secretary shall issue an order stating the conditions  
22 under which the well is to be fractured, provided the well can be  
23 fractured safely, taking into consideration the dangers from

1 creeps, squeezes or other disturbances. If ~~such~~ fracturing cannot  
2 be done safely, the ~~director~~ secretary shall issue an order stating  
3 with particularity the reasons for refusing to issue a permit.

4       The order shall state with particularity the reasons for the  
5 ~~director's~~ secretary's order and shall be mailed by registered or  
6 certified mail or by any method of delivery that requires a receipt  
7 or signature confirmation to the parties present or represented at  
8 ~~such~~ the hearing. If the ~~director~~ secretary has ruled that a  
9 permit will be issued, the ~~director~~ secretary shall issue a permit  
10 effective ten days after ~~such~~ the order is mailed, except that for  
11 good cause shown, the ~~director~~ secretary may stay the issuance of  
12 a permit for a period not to exceed thirty days.

13       If a permit is issued, the ~~director~~ secretary shall indicate  
14 the well to be fractured on the plat on file and shall number and  
15 keep an index of and docket each plat and notice received by mail  
16 as provided in section twelve of this article and each notice  
17 received by mail as provided in section thirteen of this article,  
18 entering into ~~such~~ the docket the name of the well operator, the  
19 names and addresses of all persons notified, the dates of hearings,  
20 and all actions taken by the ~~director~~ secretary. The ~~director~~  
21 secretary shall also prepare a record of the proceedings, which  
22 record shall include all applications, plats and other documents  
23 filed with by the ~~director~~ secretary, all notices given and proof

1 of service thereof, all orders issued, all permits issued, and a  
 2 transcript of the hearing. The record prepared by the ~~director~~  
 3 secretary shall be open to inspection by the public.

4 **§22-6-16. Objections to proposed drilling or converting for**  
 5 **introducing liquids or waste into wells; notices and**  
 6 **hearings; agreed location or conditions; indication of**  
 7 **changes on plats, etc.; issuance of permits; docket of**  
 8 **proceeding.**

9 (a) When a well is proposed to be drilled or converted for the  
 10 purposes provided for in section fourteen of this article and is  
 11 above a seam or seams of coal, then the coal ~~operator operating~~  
 12 ~~said coal seams beneath the tract of land, or the coal seam owner~~  
 13 ~~or lessee, if any, if said owner or lessee is not yet operating~~  
 14 ~~said coal seams~~ owner, operator or lessee, whether or not such coal  
 15 owner, operator or lessee is operating said coal seams, may within  
 16 ~~fifteen~~ thirty days from the of receipt by the ~~director~~ secretary  
 17 of the plat and notice required by section fourteen of this  
 18 article, file objections in writing ~~(forms for which will be~~  
 19 ~~furnished by the director on request)~~ to such the proposed drilling  
 20 or conversion.

21 (b) In any case where ~~in~~ a well proposed to be drilled or  
 22 converted for the purposes provided for in section fourteen of this

1 article shall, in the opinion of the ~~chief of the office of water~~  
2 ~~resources~~ Director of the Division of Water and Waste Management,  
3 affect detrimentally the reasonable standards of purity and quality  
4 of the waters of the state, ~~such chief~~ the director shall, within  
5 the time period established by the ~~director~~ secretary for the  
6 receipt of public comment on ~~such~~ the proposed drilling conversion,  
7 file with the ~~director~~ such secretary those objections in writing,  
8 ~~to such proposed drilling or conversion~~ setting out therein as  
9 ~~definitely~~ specifically as is reasonably possible the ground or  
10 grounds upon which ~~such~~ the objections are based and indicating the  
11 conditions, consistent with the provisions of this article and the  
12 rules promulgated thereunder, as may be necessary for the  
13 protection of the reasonable standards of the purity and quality of  
14 ~~such~~ the waters of the state under which ~~such~~ the proposed drilling  
15 or conversion may be completed to overcome ~~such~~ any objections. ~~if~~  
16 ~~any.~~

17 (c) If any ~~objection or~~ objections to the proposed drilling  
18 are ~~so~~ filed or ~~are~~ made by the ~~director~~ secretary, the ~~director~~  
19 secretary shall notify the well operator of the character of the  
20 objections and by whom made and fix a time and place, not less than  
21 thirty days from the end of ~~said~~ the thirty-day period, at which  
22 ~~such~~ those objections will be considered. ~~of which~~ At that time and  
23 place the well operator and all objecting coal operators, ~~the~~

1 owners or lessees, if any, or ~~such chief,~~ the director shall be  
2 given at least ~~ten~~ fifteen days' written notice by the ~~director~~  
3 secretary by registered or certified mail or by any method of  
4 delivery that requires a receipt or signature confirmation and  
5 summoned to appear. At the time and place so fixed, the well  
6 operator and the objecting coal operators, owners or lessees, if  
7 any, or ~~such~~ any of them ~~as~~ who are present or represented or ~~such~~  
8 ~~chief,~~ the director shall proceed to consider the objections. In  
9 the case of proposed drilling or converting of a well for the  
10 purposes provided for in section fourteen of this article, ~~such~~ the  
11 parties present or represented may agree upon either the location  
12 as made or ~~so~~ moved so as to satisfy all objections and meet the  
13 approval of the ~~director,~~ secretary. ~~and any~~ Any change in the  
14 original location so agreed upon and approved by the ~~director~~  
15 secretary shall be indicated on ~~said~~ the plat on file with the  
16 ~~director~~ secretary, and the distance and direction of the new  
17 location from the original location shall be shown and, as so  
18 altered, the plat shall be filed and become a permanent record. In  
19 the case of proposed conversion, ~~such~~ the parties present or  
20 represented may agree upon conditions under which the conversion is  
21 to take place for the protection of life and property or for  
22 protection of reasonable standards of purity and quality of the  
23 waters of the state. At which time the plat and notice required by

1 section fourteen shall be filed and become a permanent record.  
2 Whereupon the ~~director~~ secretary may issue to the well operator a  
3 permit to drill or convert, as the case may be, reciting the filing  
4 of the plat and notice required by ~~said~~ section fourteen that at a  
5 hearing duly held a location as shown on the plat or the conditions  
6 under which the conversion is to take place for the protection of  
7 life and property and reasonable standards of purity and quality of  
8 the waters of the state ~~where~~ agreed upon and approved and that the  
9 well operator is authorized to drill at ~~such~~ the location or to  
10 convert at the site shown on ~~such~~ the plat, as the case may be.

11 (d) (1) In the case where the well operator and the objecting  
12 coal operators, owners or lessees, if any, and ~~such~~ chief, the  
13 director or ~~such as~~ any who are present or represented at ~~such~~ the  
14 hearing are unable to agree upon a drilling location, or upon a  
15 drilling location that meets the approval of the ~~director~~  
16 secretary, then the ~~director~~ secretary shall proceed to hear the  
17 evidence and testimony in accordance with sections one and two,  
18 article five, chapter twenty-nine-a of this code, except where such  
19 provisions are inconsistent with this article. The ~~director~~  
20 secretary shall take into consideration ~~upon~~ in arriving at his or  
21 her decision:

22 (A) Whether the drilling location is above or in close  
23 proximity to any mine opening or shaft, entry, ~~traveling~~ travelway,



1 air haulage, drainage or passageway, loadout, stockpile, pit,  
2 highwall, active surface mining, or to any proposed extension  
3 thereof, in any operated or abandoned or operating coal mine, or  
4 coal mine already surveyed and platted, but not yet being operated;

5 (B) Whether the proposed drilling can reasonably be done  
6 through an existing or planned pillar of coal, or in close  
7 proximity to an existing well or pillar of coal, taking into  
8 consideration the surface topography;

9 (C) Whether a well can be drilled safely, taking into  
10 consideration the dangers from creeps, squeezes or other  
11 disturbances, due to the extraction of coal; and

12 (D) The extent to which the proposed drilling location  
13 unreasonably interferes with the safe recovery of coal, oil and  
14 gas.

15 (2) At the close of the hearing or within ten days thereafter  
16 the ~~director~~ secretary shall issue an order:

17 (A) Refusing to issue a permit;

18 (B) Issuing a permit for the proposed drilling location; ~~or~~

19 (C) Issuing a permit for a drilling location different than  
20 that requested by the well operator; or

21 (D) Placing other limitations on the drilling location or  
22 process as the secretary finds necessary to protect human health or  
23 safety or the environment.

1           The order shall state with particularity the reasons for the  
2 ~~director's~~ secretary's order and shall be mailed by registered or  
3 certified mail or by any method of delivery that requires a receipt  
4 or signature confirmation to the parties present or represented at  
5 ~~such~~ the hearing. If the ~~director~~ secretary has ruled that a  
6 permit will be issued, the ~~director~~ secretary shall issue a permit  
7 effective ten days after ~~such~~ the order is mailed, ~~Except~~ except  
8 that for good cause shown, the ~~director~~ secretary may stay the  
9 issuance of a permit for a period not to exceed thirty days.

10           (3) If a permit is issued, the ~~director~~ secretary shall  
11 indicate the new drilling location on the plat on file with the  
12 ~~director~~ secretary and shall number and keep an index of and docket  
13 each plat and notice mailed to the ~~director~~ secretary as provided  
14 in section twelve of this article, and each notice mailed to the  
15 ~~director~~ secretary as provided in section thirteen of this article,  
16 entering into ~~such~~ the docket the name of the well operator and the  
17 names and addresses of all persons notified, the dates of hearings  
18 and all actions taken by the ~~director~~ secretary, permits issued or  
19 refused, the papers filed, and a transcript of the hearing. This  
20 shall constitute a record of the proceedings before the ~~director~~  
21 secretary and shall be open to inspection by the public.

22           (e) (1) In the case the well operator and the objecting coal  
23 operators, owners or lessees, if any, and ~~such chief,~~ the director

1 or ~~such as any who~~ are present or represented at ~~such~~ the hearing  
2 are unable to agree upon the conditions under which the well is to  
3 be converted so as to protect life and property and the reasonable  
4 standards of purity and quality of the waters of the state or upon  
5 conditions of converting that meet with the approval of the  
6 ~~director~~ secretary, then the ~~director~~ secretary shall proceed to  
7 hear the evidence and testimony in accordance with sections one and  
8 two, article five, chapter twenty-nine-a of this code, except where  
9 such provisions are inconsistent with this article. The ~~director~~  
10 secretary shall take into consideration ~~upon~~ in making his or her  
11 decision:

12 (A) Whether the well can be converted safely, taking into  
13 consideration the dangers from creeps, squeezes or other  
14 disturbances; and

15 (B) Whether the well can be converted, taking into  
16 consideration the reasonable standards of the purity and quality of  
17 the waters of the state.

18 (2) At the close of the hearing, or within ten days  
19 thereafter, the ~~director~~ secretary shall issue an order stating the  
20 conditions under which the conversion is to take place, providing  
21 the well can be converted safely taking into consideration the  
22 dangers from creeps, squeezes or other disturbances and the  
23 reasonable standards of purity and quality of the waters of this

1 state. If ~~such~~ converting cannot be done safely or if the  
2 reasonable standards of purity and quality of ~~such~~ the waters of  
3 the state will be endangered, the ~~director~~ secretary shall issue an  
4 order stating with particularity the reasons for refusing to issue  
5 a permit.

6 (3) The order shall state with particularity the reasons for  
7 the ~~director's~~ secretary's order and shall be mailed by registered  
8 or certified mail or by any method of delivery that requires a  
9 receipt or signature confirmation to the parties present or  
10 represented at ~~such~~ the hearing. If the ~~director~~ secretary has  
11 ruled that a permit will be issued, ~~such~~ the permit shall become  
12 effective ten days after the ~~division~~ department has mailed ~~such~~  
13 the order, ~~Except~~ except for good cause shown, the ~~director~~  
14 secretary may stay the issuance of a permit for a period not to  
15 exceed thirty days.

16 (4) If a permit is issued, the ~~director~~ secretary shall  
17 indicate the well to be converted on the plat on file with the  
18 ~~director,~~ secretary and shall number and keep an index of and  
19 docket each plat and notice mailed to the ~~director~~ secretary as  
20 provided in section fourteen of this article, entering into ~~such~~  
21 the docket the name of the well operator and the names and  
22 addresses of all persons notified, the dates of hearings and all  
23 actions taken by the ~~director~~ secretary, permits issued or refused,

1 the papers filed, and a transcript of the hearings. This shall  
2 constitute a record of the proceedings before the ~~director~~  
3 secretary and shall be open to inspection by the public.

4 **§22-6-17. Objections to proposed drilling or deepening of shallow**  
5 **gas wells; notice to chair of review board; indication**  
6 **of changes on plats; issuance of permits.**

7 (a) When a proposed shallow well drilling site is above a seam  
8 or seams of coal, then the coal owner, ~~of any such coal seam~~  
9 operator or lessee, whether or not the coal owner, operator or  
10 lessee is operating the coal seams may, within ~~fifteen~~ thirty days  
11 ~~from the~~ of receipt by the ~~director~~ secretary of the plat and  
12 notice required by section twelve of this article, file objections  
13 in writing ~~(forms for which will be furnished by the director on~~  
14 ~~request)~~ to ~~such~~ the proposed drilling or deepening with the  
15 ~~director~~ secretary, setting out therein as ~~definitely~~ specifically  
16 as is reasonably possible the ground or grounds on which ~~such~~ those  
17 objections are based.

18 (b) If any ~~such~~ objection is filed or if ~~any objection is made~~  
19 by the ~~director~~ secretary, the ~~director~~ secretary shall ~~forthwith~~  
20 immediately mail, ~~by registered or certified mail, to~~ serve upon  
21 the chair of the review board a notice that an objection to the  
22 proposed drilling or deepening of a shallow well has been filed  
23 with or made by the ~~director,~~ secretary and shall enclose in ~~such~~

1 that notice a copy of all objections and of the application and  
2 plat filed with the ~~director~~ secretary in accordance with the  
3 provisions of section twelve of this article.

4 (1) Thereafter, no further action shall be taken on ~~such the~~  
5 application by the ~~director~~ secretary until an order is received  
6 from the review board directing the ~~director~~ secretary to:

7 ~~(a)~~ (A) Refuse a drilling permit; or

8 ~~(b)~~ (B) Issue a drilling permit for the proposed drilling  
9 location; or

10 ~~(c)~~ (C) Issue a drilling permit for an alternate drilling  
11 location different from that requested by the well operator; or

12 ~~(d)~~ (D) Issue a drilling permit either for the proposed  
13 drilling location or for an alternate drilling location different  
14 from that requested by the well operator, but not allow the  
15 drilling of the well for a period of not more than one year from  
16 the date of issuance of ~~such the~~ permit; or

17 (E) Place other limitations on the drilling location or  
18 process as the review board finds necessary to protect human health  
19 or safety or the environment.

20 (2) Upon receipt of ~~such the~~ review board order, the ~~director~~  
21 secretary shall promptly undertake the action directed by the  
22 review board, except that the ~~director~~ secretary shall not issue a  
23 drilling permit unless the applicant has complied with all other

1 provisions of this article (except section fifteen) pertaining to  
2 the application for and approval of a drilling permit ~~have been~~  
3 ~~complied with~~. All permits issued by the ~~director~~ secretary  
4 pursuant to this section shall be effective ten days after issuance  
5 unless the review board orders the ~~director~~ secretary to stay the  
6 effectiveness of a permit for a period not to exceed thirty days  
7 from the date of issuance.

8       (3) If a permit is issued, the ~~director~~ secretary shall  
9 indicate the approved drilling location on the plat filed with the  
10 ~~director~~ secretary in accordance with the provisions of section  
11 twelve of this article and shall number and keep an index of and  
12 docket each plat and notice mailed to the ~~director~~ secretary as  
13 provided in section twelve of this article and each notice mailed  
14 to the ~~director~~ secretary as provided in section thirteen of this  
15 article, entering into ~~such~~ the docket the name of the well  
16 operator and the names and addresses of all persons notified, the  
17 dates of conferences, hearings, and all other actions taken by the  
18 ~~director~~ secretary and the review board. The ~~director~~ secretary  
19 shall also prepare a record of the proceedings, which record shall  
20 include all applications, plats and other documents filed with the  
21 ~~director~~ secretary, all notices given and proof of service thereof,  
22 all orders issued, all permits issued and a transcript of the  
23 hearing. The record prepared by the ~~director~~ secretary shall be

1 open to inspection by the public.

2 **§22-6-18. Protective devices -- When well penetrates workable coal**  
3 **bed; when gas is found beneath or between workable**  
4 **coal beds.**

5 (a) When a well penetrates one or more workable coal beds, the  
6 well operator shall run and cement a string of casing in the hole  
7 through the workable coal bed or beds in ~~such~~ a manner ~~as~~ that will  
8 exclude all oil, gas or gas pressure from the coal bed or beds,  
9 except such oil, gas or gas pressure as may be found in such coal  
10 bed or beds. ~~Such~~ The string of casing shall be run to a point at  
11 least thirty feet below the lowest workable coal bed which the well  
12 penetrates and shall be circulated and cemented from ~~such~~ that  
13 point to the surface in ~~such~~ a manner as provided for in reasonable  
14 rules promulgated by the ~~director~~ secretary in accordance with the  
15 provisions of chapter twenty-nine-a. After ~~any such~~ that string of  
16 casing has been so run and cemented to the surface, drilling may  
17 proceed to the permitted depth.

18 (b) In the event that gas is found beneath a workable coal bed  
19 before the hole has been reduced from the size it had at the coal  
20 bed, a packer shall be placed below the coal bed<sub>7</sub> and above the gas  
21 horizon, and the gas by this means diverted to the inside of the  
22 adjacent string of casing through perforations made in ~~such~~ the  
23 casing<sub>7</sub> and through it passed to the surface without contact with



1 the coal bed. Should gas be found between two workable beds of  
2 coal, in a hole<sup>7</sup> of the same diameter from bed to bed, two packers  
3 shall be placed, with perforations in the casing between them,  
4 permitting the gas to pass to the surface inside the adjacent  
5 casing. In either of the cases here specified, the strings of  
6 casing shall extend from their seats to the top of the well.

7 **§22-6-19. Same -- Continuance during life of well; dry or**  
8 **abandoned wells.**

9 In the event that a well becomes productive of natural gas or  
10 petroleum or is drilled for or converted for the introduction of  
11 pressure, whether liquid or gas, or for the introduction of liquid  
12 for the purposes provided for in section twenty-five of this  
13 article or for the disposal of pollutants or the effluent  
14 therefrom, all coal-protecting strings of casing and all water-  
15 protecting strings of casing shall remain in place until the well  
16 is plugged or abandoned. During the life of the well the annular  
17 spaces between the various strings of casing adjacent to workable  
18 beds of coal shall be kept open<sup>7</sup> and the top ends of all such  
19 strings shall be provided with casing heads or ~~such~~ other suitable  
20 devices ~~as~~ that will permit the free passage of gas and prevent  
21 filling of ~~such~~ the annular spaces with dirt or debris.

22 Any well which is completed as a dry hole or which is not in  
23 use for a period of twelve consecutive months shall be presumed to

1 have been abandoned and shall promptly be plugged by the operator  
2 in accordance with the provisions of this article, unless the  
3 operator furnishes satisfactory proof to the ~~director~~ secretary  
4 that there is a bona fide future use for ~~such~~ the well.

5 **§22-6-20. Same -- When well is drilled through horizon of coalbed**  
6 **from which coal has been removed.**

7 When a well is drilled through the horizon of a coalbed from  
8 which the coal has been removed, the hole shall be drilled at least  
9 thirty feet below the coalbed of a size sufficient to permit the  
10 placing of a liner which shall start not less than twenty feet  
11 beneath the horizon of the coalbed and extend not less than twenty  
12 feet above it. Within this liner, which may be welded to the  
13 casing to be used, shall be centrally placed the largest-sized  
14 casing to be used in the well and the space between the liner and  
15 casing shall be filled with cement as they are lowered into the  
16 hole. Cement shall be placed in the bottom of the hole to a depth  
17 of twenty feet to form a sealed seat for both liner and casing:  
18 *Provided*, That the liner may extend back to the surface and serve  
19 as the freshwater or coal protection casing, if done in accordance  
20 with sections eighteen and twenty-one of this article, as  
21 applicable. If the liner is constructed in this manner, the next  
22 string of casing to be run into the well shall extend at least  
23 twenty feet below the coalbed. Cement shall be placed between that

1 string of casing and the liner from the bottom of the casing to a  
2 point at least twenty feet above the coalbed. Following the  
3 setting of the liner, drilling shall proceed in the manner provided  
4 above. Should it be found necessary to drill through the horizon  
5 of two or more workable coalbeds from which the coal has been  
6 removed, the liner shall be started not less than twenty feet below  
7 the lowest horizon penetrated and shall extend to a point not less  
8 than twenty feet above the highest horizon.

9 **§22-6-21. Same -- Installation of fresh water casings.**

10 (a) When a permit has been issued for the drilling of an oil  
11 or gas well or both, each well operator shall run and permanently  
12 cement a string of casing in the hole through the fresh water  
13 bearing strata in ~~such~~ a manner and to the extent provided for in  
14 rules promulgated by the ~~director~~ secretary in accordance with the  
15 provisions of this chapter.

16 (b) No oil or gas well shall be drilled nearer than two  
17 hundred feet from an existing water well or occupied dwelling  
18 without first obtaining the written consent of the owner of such  
19 water well or occupied dwelling or near surface water of the state  
20 that is less than one hundred feet downgradient from the oil or gas  
21 well.

22 **§22-6-22. Well report, logs, core samples and cuttings to be**  
23 **filed; confidentiality and permitted use; authority**

1                   **to promulgate rules.**

2           (a) Within a reasonable time after the completion of the  
3 drilling of a shallow well or deep well, the well operator shall  
4 file with the secretary and with the state Geological and Economic  
5 Survey a completion report containing the following:

6           (1) The character, depth and thickness of geological  
7 formations encountered, including fresh water, coal seams, mineral  
8 beds, brine and oil and gas bearing formations; and

9           (2) ~~Such~~ Any other information as the secretary may require to  
10 effectuate the purposes of this chapter.

11           The secretary may promulgate ~~such~~ reasonable rules in  
12 accordance with article three, chapter twenty-nine-a of this code,  
13 ~~as~~ that may be considered necessary to ensure that the character,  
14 depth and thickness of geological formations encountered are  
15 accurately logged: *Provided*, That the secretary shall not require  
16 logging by the use of an electrical logging device: *Provided*,  
17 *however*, That if electrical or mechanical or geophysical logs are  
18 recorded in the well, the secretary may request copies of these  
19 logs: *Provided further*, That mechanical or geophysical logs may not  
20 include vertical seismic profiles or two-dimensional or three-  
21 dimensional seismic information.

22           (b) If a well operator takes core samples, that activity shall  
23 be noted within the report, and, within sixty days after filing the

1 completion report, the operator shall, subject to the terms of this  
2 article, provide the state Geological and Economic Survey with a  
3 complete set of cores, consisting of at least quarter slabs,  
4 correctly labeled and identified according to depth. The core  
5 samples requested by and provided to the state Geological and  
6 Economic Survey may not contain any materials or documents made  
7 with regard to analyzing or interpreting the core samples.

8 (c) If a well operator catches cuttings during the drilling of  
9 any deep or shallow well, that activity shall be noted within the  
10 report and, within sixty days after filing the completion report,  
11 the operator shall, subject to the terms of this article, provide  
12 the state Geological and Economic Survey with a sample of the  
13 cuttings, correctly labeled and identified according to depth.

14 (d) Any information, reports, cuttings and core samples  
15 requested by and provided to the state Geological and Economic  
16 Survey by the operator shall be kept confidential at the written  
17 request of the operator for a specified amount of time as follows:

18 (1) Except for core samples, any logs, drill cuttings, reports  
19 and other information or materials that reveal trade secrets or  
20 other confidential business information relating to the competitive  
21 interests of the operator or the operator's privy may not be  
22 disclosed to the public for one year following delivery, unless the  
23 operator consents in writing to a shorter time. At the operator's

1 written request, the period of confidentiality may be extended in  
2 annual increments: *Provided*, That the total period of  
3 confidentiality may not exceed three years.

4 (2) Any core samples may not be disclosed to the public for  
5 five years following delivery to the state Geological and Economic  
6 Survey, unless the operator consents in writing to a shorter time.

7 At the operator's written request, the period of confidentiality  
8 may be extended for an additional five years: *Provided*, That the  
9 total period of confidentiality may not exceed ten years.

10 (e) Notwithstanding the provisions of subsection (d) of this  
11 section, the state Geological and Economic Survey may store and  
12 process confidential information within its minerals mapping or  
13 geographic information systems; however, that confidential  
14 information may not be revealed to the public until the lapsing of  
15 the period of confidentiality created pursuant to subsection (d) of  
16 this section. After the period of confidentiality has lapsed,  
17 statistics or other information generated as the result of storage  
18 and processing may be disclosed in the aggregate through articles,  
19 reports, maps, or lectures presented in accordance with generally  
20 accepted academic or scientific practices and in a manner to  
21 preclude the identification of a particular well or operator.

22 **§22-6-23. Plugging, abandonment and reclamation of well; notice of**  
23 **intention; bonds; affidavit showing time and manner.**

1 All dry or abandoned wells or wells presumed to be abandoned  
2 under the provisions of section nineteen of this article shall be  
3 plugged and reclaimed in accordance with this section and the other  
4 provisions of this article and in accordance with the rules  
5 promulgated by the secretary.

6 Prior to the commencement of plugging operations and the  
7 abandonment of any well, the well operator shall either: (a)  
8 Notify, by registered or certified mail or by any method of  
9 delivery that requires a receipt or signature confirmation, the  
10 secretary and the coal operator operating coal seams, the coal seam  
11 owner of record or lessee of record, if any, to whom notices are  
12 required to be given by section twelve of this article, and the  
13 coal operators to whom notices are required to be given by section  
14 thirteen of this article, of its intention to plug and abandon any  
15 such well (using ~~such~~ the form of notice as the secretary may  
16 provide), giving the number of the well and its location and fixing  
17 the time at which the work of plugging and filling will be  
18 commenced, which time shall be not less than five days after the  
19 day on which ~~such~~ the notice so mailed is received ~~or in due course~~  
20 ~~should be received~~ by the secretary, in order that a representative  
21 or representatives of the secretary and ~~such~~ the coal operator,  
22 owner or lessee, if any, may be present at the plugging and filling  
23 of the well: *Provided*, That whether ~~such~~ any representatives appear

1 or do not appear, the well operator may proceed at the time fixed  
2 to plug and fill the well in the manner hereinafter described; or  
3 (b) First obtain the written approval of the secretary and ~~such~~ the  
4 coal operator, owner or lessee, if any; or (c) In the event the  
5 well to be plugged and abandoned is one on which drilling or  
6 reworking operations have been continuously progressing pursuant to  
7 authorization granted by the secretary, first obtain the verbal  
8 permission of the secretary or the secretary's designated  
9 representative to plug and abandon the well, except that the well  
10 operator shall, within a reasonable period not to exceed five days  
11 after the commencement of the plugging operations, give the written  
12 notices required by subdivision (a) above.

13       The well operator shall not be required to prepare or submit  
14 to the ~~director~~ secretary a plat prior to the commencement of  
15 plugging operations as long as a plat pertaining to the particular  
16 well is on file with the ~~director~~ secretary and accurately  
17 identifies the location of the well, or so long as there is also on  
18 file with the ~~director~~ secretary the coordinates of the well  
19 established by a global positioning system. The coordinates  
20 established by a global positioning system must be filed with the  
21 secretary in either a written or electronic form prescribed by the  
22 secretary. The global positioning system used to establish the  
23 coordinates shall be accurate within the variance allowed by law



1 for the distance between the actual location of the well and  
2 location shown on the plat that is required to be filed with a well  
3 permit application, or the secretary may establish the accuracy of  
4 the global positioning system by legislative rule promulgated  
5 pursuant to section two of this article.

6 No well may be plugged or abandoned unless prior to the  
7 commencement of plugging operations and the abandonment of any well  
8 the secretary is furnished a bond as provided in section twenty-six  
9 of this article. In no event prior to the commencement of plugging  
10 operations shall a lessee under a lease covering a well be required  
11 to give or sell the well to any person owning an interest in the  
12 well, including, but not limited to, the respective lessor<sup>7</sup> or  
13 agent of the lessor, nor may the lessee be required to grant a  
14 person with an interest in the well, including, but not limited to,  
15 the respective lessor<sup>7</sup> or agent of the lessor<sup>7</sup> an opportunity to  
16 qualify under section twenty-six of this article to continue  
17 operation of the well.

18 When the plugging, filling and reclamation of a well have been  
19 completed, an affidavit, in triplicate, shall be made (on a form to  
20 be furnished by the secretary) by two experienced persons who  
21 participated in the work, the secretary or the secretary's  
22 designated representative, in which affidavit shall be set forth  
23 the time and manner in which the well was plugged and filled and

1 the land reclaimed. One copy of this affidavit shall be retained  
2 by the well operator, another (or true copies of same) shall be  
3 mailed to the coal operator or operators, if any, and the third to  
4 the secretary.

5 **§22-6-24. Methods of plugging well.**

6       Upon the abandonment or cessation of the operation of any well  
7 drilled for natural gas or petroleum, or drilled or converted for  
8 the introduction of pressure, whether liquid or gas, or for the  
9 introduction of liquid for the purposes provided for in section  
10 twenty-five of this article or for the disposal of pollutants or  
11 the effluent therefrom, the well operator, at the time of such  
12 abandonment or cessation, shall fill and plug the well in the  
13 following manner:

14       (a) Where the well does not penetrate workable coal beds, it  
15 shall either be filled with mud, clay or other nonporous material  
16 from the bottom of the well to a point twenty feet above the top of  
17 its lowest oil, gas or water-bearing stratum, or a permanent bridge  
18 shall be anchored thirty feet below its lowest oil, gas or water-  
19 bearing stratum, and from such bridge it shall be filled with mud,  
20 clay or other nonporous material to a point twenty feet above such  
21 stratum. ~~at~~ At this point there shall be placed a plug of cement or  
22 other suitable material which will completely seal the hole.  
23 Between this sealing plug and a point twenty feet above the next

1 higher oil, gas or water-bearing stratum, the hole shall be filled  
2 in the manner just described, and at such point there shall be  
3 placed another plug of cement or other suitable material which will  
4 completely seal the hole. In like manner the hole shall be filled  
5 and plugged with reference to each of its oil, gas or water-bearing  
6 strata. However, whenever ~~such~~ the strata are not widely separated  
7 and are free from water, they may be grouped and treated as a  
8 single sand, gas or petroleum horizon, and the aforesaid filling  
9 and plugging shall be performed as though there were but one  
10 horizon. After the plugging of all oil, gas or water-bearing  
11 strata, as aforesaid, a final cement plug shall be placed  
12 approximately ten feet below the bottom of the largest casing in  
13 the well and from this point to the surface the well shall be  
14 filled with mud, clay or other nonporous material. In case any of  
15 the oil or gas-bearing strata in a well shall have been shot,  
16 thereby creating cavities which cannot readily be filled in the  
17 manner above described, the well operator shall follow either of  
18 the following methods:

19 (1) Should the stratum which has been shot be the lowest one  
20 in the well, there shall be placed, at the nearest suitable point,  
21 but not less than twenty feet above the stratum, a plug of cement  
22 or other suitable material which will completely seal the hole. In  
23 the event, however, that the shooting has been done above one or

1 more oil or gas-bearing strata in the well, plugging in the manner  
2 specified shall be done at the nearest suitable point, but not less  
3 than twenty feet below and above the stratum shot; or

4       (2) When such cavity ~~shall be~~ is in the lowest oil or gas-  
5 bearing stratum in the well, a liner shall be placed which shall  
6 extend from below the stratum to a suitable point, but not less  
7 than twenty feet above the stratum in which shooting has been done.  
8 In the event, however, that the shooting has been done above one or  
9 more oil or gas-bearing strata in the well, the liner shall be so  
10 placed that it will extend not less than twenty feet above nor less  
11 than twenty feet below the stratum in which shooting has been done.  
12 Following the placing of the liner in the manner here specified it  
13 shall be compactly filled with cement, mud, clay or other nonporous  
14 sealing material.

15       (b) Where the well penetrates one or more workable coal beds  
16 and a coal protection string of casing has been circulated and  
17 cemented into the surface, the well shall be filled and securely  
18 plugged in the manner provided in subsection (a) of this section,  
19 except that expanding cement shall be used instead of regular  
20 hydraulic cement, to a point approximately one hundred feet below  
21 the bottom of the coal protection string of casing. A one hundred  
22 foot plug of expanding cement shall then be placed in the well so  
23 that the top of ~~such~~ the plug is located at a point just below the

1 coal protection string of casing. After ~~such~~ the plug has been  
2 securely placed in the well, the coal protection string of casing  
3 shall be emptied of liquid from the surface to a point one hundred  
4 feet below the lowest workable coal bed or to the bottom of the  
5 coal protection string of casing, whichever is shallower. A vent  
6 or other device approved by the ~~director~~ secretary shall then be  
7 installed on the top of the coal protection string of casing in  
8 ~~such~~ a manner that will prevent liquids and solids from entering  
9 the well but will permit ready access to the full internal diameter  
10 of the coal protection string of casing when required. The coal  
11 protection string of casing and the vent or other device approved  
12 by the ~~director~~ secretary shall extend, when finally in place, a  
13 distance of not less than thirty inches above ground level and  
14 shall be permanently marked with the well number assigned by the  
15 ~~director~~ secretary;

16 (c) Where the well penetrates one or more workable coal beds  
17 and a coal protection string of casing has not been circulated and  
18 cemented in to the surface, the well shall be filled and securely  
19 plugged in the manner provided in subsection (a) of this section to  
20 a point fifty feet below the lowest workable coal bed. Thereafter,  
21 a plug of cement shall be placed in the well at a point not less  
22 than forty feet below the lowest workable coal bed. After the  
23 cement plug has been securely placed in the well, the well shall be

1 filled with cement to a point twenty feet above the lowest workable  
2 coal bed. From this point the well shall be filled with mud, clay  
3 or other nonporous material to a point forty feet beneath the next  
4 overlying workable coal bed, if ~~such there be~~ any, and the well  
5 shall then be filled with cement from this point to a point twenty  
6 feet above ~~such~~ the workable coal bed, and similarly ~~in case if~~  
7 there are more overlying workable coal beds. After the filling and  
8 plugging of the well to a point above the highest workable coal  
9 bed, filling and plugging of the well shall continue in the manner  
10 provided in subsection (a) of this section to a point fifty feet  
11 below the surface, and a plug of cement shall be installed from the  
12 point fifty feet below the surface to the surface with a monument  
13 installed therein extending thirty inches above ground level;

14 (d) (1) Where the well penetrates one or more workable coal  
15 beds and a coal protection string of casing has not been circulated  
16 and cemented in to the surface, a coal operator or coal seam owner  
17 may request that the well be plugged in the manner provided in  
18 subdivision (3) of this subsection rather than by the method  
19 provided in subsection (c) of this section. Such request (forms  
20 for which shall be provided by the ~~director~~ secretary) must be  
21 filed in writing with the ~~director~~ secretary prior to the scheduled  
22 plugging of the well, and must include the number of the well to be  
23 plugged and the name and address of the well operator. At the time

1 ~~such~~ the request is filed with the ~~director~~ secretary, a copy of  
2 ~~such request~~ it must also be mailed by registered or certified mail  
3 or any method of delivery that requires a receipt or signature  
4 confirmation to the well operator named in the request.

5 (2) Upon receipt of ~~such~~ the request, the ~~director~~ secretary  
6 shall issue an order staying the plugging of the well and shall  
7 promptly determine the cost of plugging the well in the manner  
8 provided in subdivision (3) of this subsection and the cost of  
9 plugging the well in the manner provided in subsection (c) of this  
10 section. In making ~~such~~ that determination, the ~~director~~ secretary  
11 shall take into consideration any agreement previously made between  
12 the well operator and the coal operator or coal seam owner making  
13 the request. If the ~~director~~ secretary determines that the cost of  
14 plugging the well in the manner provided in subsection (c) of this  
15 section exceeds the cost of plugging the well in the manner  
16 provided in subdivision (3) of this subsection, the ~~director~~  
17 secretary shall grant the request of the coal operator or owner and  
18 shall issue an order requiring the well operator to plug the well  
19 in the manner provided in subdivision (3) of this subsection. If  
20 the ~~director~~ secretary determines that the cost of plugging the  
21 well in the manner provided in subsection (c) of this section is  
22 less than the cost of plugging the well in the manner provided in  
23 subdivision (3) of this subsection, the ~~director~~ secretary shall

1 request payment into escrow of the difference between the  
2 determined costs by the coal operator or coal seam owner making the  
3 request. Upon receipt of satisfactory notice of ~~such~~ the payment  
4 or upon receipt of notice that the well operator has waived ~~such~~  
5 the payment, the ~~director~~ secretary shall grant the request of the  
6 coal operator or coal seam owner and shall issue an order requiring  
7 the well operator to plug the well in the manner provided in  
8 subdivision (3) of this subsection. If satisfactory notice of  
9 payment into escrow or notice that the well operator has waived  
10 ~~such~~ payment is not received by the ~~director~~ secretary within  
11 fifteen days after the request for payment into escrow, the  
12 ~~director~~ secretary shall issue an order permitting the plugging of  
13 the well in the manner provided in subsection (c) of this section.  
14 Copies of all orders issued by the ~~director~~ secretary shall be sent  
15 by registered or certified mail or any method of delivery that  
16 requires a receipt or signature confirmation to the coal operator  
17 or coal seam owner making the request and to the well operator.  
18 When the escrow agent has received certification from the ~~director~~  
19 secretary of the satisfactory completion of the plugging work and  
20 the reimbursable extra cost thereof (that is, the difference  
21 between the ~~director's~~ secretary's determination of plugging cost  
22 in the manner provided in subsection (c) of this section and the  
23 well operator's actual plugging cost in the manner provided in



1 subdivision (3) of this subsection), the escrow agent shall pay the  
2 reimbursable sum to the well operator or the well operator's  
3 nominee from the payment into escrow to the extent available. The  
4 amount by which the payment into escrow exceeds the reimbursable  
5 sum plus the escrow agent's fee, if any, shall be repaid to the  
6 coal owner. If the amount paid to the well operator or the well  
7 operator's nominee is less than the actual reimbursable sum, the  
8 escrow agent shall inform the coal owner, who shall pay the  
9 deficiency to the well operator or the well operator's nominee  
10 within thirty days. If the coal operator breaches this duty to pay  
11 the deficiency, the well operator shall have a right of action and  
12 be entitled to recover damages as if for wrongful conversion of  
13 personalty and reasonable attorney fees.

14 (3) Where a request of a coal operator or coal seam owner  
15 filed pursuant to subdivision (1) of this subsection has been  
16 granted by the ~~director~~ secretary, the well shall be plugged in the  
17 manner provided in subsection (a) of this section, except that  
18 expanding cement shall be used instead of regular hydraulic cement,  
19 to a point approximately two hundred feet below the lowest workable  
20 coal bed. A one hundred foot plug of expanding cement shall then  
21 be placed in the well beginning at the point approximately two  
22 hundred feet below the lowest workable coal bed and extending to a  
23 point approximately one hundred feet below the lowest workable coal

1 bed. A string of casing with an outside diameter no less than four  
2 and one-half inches shall then be run into the well to a point  
3 approximately one hundred feet below the lowest workable coal bed  
4 and ~~such~~ the string of casing shall be circulated and cemented in  
5 to the surface. The casing shall then be emptied of liquid from a  
6 point approximately one hundred feet below the lowest workable coal  
7 bed to the surface, and a vent or other device approved by the  
8 ~~director~~ secretary shall be installed on the top of the string of  
9 casing in ~~such~~ a manner that ~~it~~ will prevent liquids and solids  
10 from entering the well but will permit ready access to the full  
11 internal diameter of the coal protection string of casing when  
12 required. The string of casing and the vent or other device  
13 approved by the ~~director~~ secretary shall extend, when finally in  
14 place, a distance of no less than thirty inches above ground level  
15 and shall be permanently marked with the well number assigned by  
16 the ~~director~~ secretary. Notwithstanding the foregoing provisions  
17 of this subdivision, if under particular circumstances a different  
18 method of plugging is required to obtain the approval of another  
19 governmental agency for the safe mining through of said well, the  
20 ~~director~~ secretary may approve ~~such~~ a different method of plugging  
21 if the ~~director~~ secretary finds ~~the same~~ it to be as safe for  
22 mining through and otherwise adequate to prevent gas or other fluid  
23 migration from the oil and gas reservoirs as the method above

1 specified.

2 (e) Where the well penetrates one or more workable coal beds,  
3 a coal operator or coal seam owner or lessee may request that the  
4 well be plugged in a manner that meets federal Miners Safety and  
5 Health Administration (MSHA) requirements for mining through the  
6 well. Any such request shall be submitted and addressed as  
7 provided in subparagraph (d) of this section.

8 ~~(e)~~ (f) Any person may apply to the ~~director~~ secretary for an  
9 order to clean out and replug a previously plugged well in a manner  
10 which will permit the safe mining through of ~~such~~ the well. ~~Such~~  
11 The application shall be filed with the ~~director~~ secretary and  
12 shall contain the well number, a general description of the well  
13 location, the name and address of the owner of the surface land  
14 upon which the well is located, a copy of or record reference to a  
15 deed, lease or other document which entitles the applicant to enter  
16 upon the surface land, a description of the methods by which the  
17 well was previously plugged, and a description of the method by  
18 which ~~such~~ the applicant proposes to clean out and replug the well.  
19 At the time an application is filed with the ~~director~~ secretary, a  
20 copy shall be mailed by registered or certified mail or by any  
21 method of delivery that requires a receipt or signature  
22 confirmation to the owner or owners of the land, and the oil and  
23 gas lessee of record, if any, of the site upon which the well is

1 located. If no objection to the replugging of the well is filed by  
2 any ~~such~~ relevant landowner or oil and gas lessee within thirty  
3 days after the filing of the application, and if the ~~director~~  
4 secretary determines that the method proposed for replugging the  
5 well will permit the safe mining through of such well, the ~~director~~  
6 secretary shall grant the application by an order authorizing the  
7 replugging of the well. Such order shall specify the method by  
8 which the well shall be replugged, and copies thereof shall be  
9 mailed by certified or registered mail or by any method of delivery  
10 that requires a receipt or signature confirmation to the applicant  
11 and to the owner or owners of the land, and to the oil and gas  
12 lessee, if any, of the site upon which ~~such~~ the well is located.  
13 If any ~~such~~ relevant landowner or oil and gas lessee objects to the  
14 replugging of the well, the ~~director~~ secretary shall notify the  
15 applicant of ~~such~~ the objection. Thereafter, the ~~director~~  
16 secretary shall schedule a hearing to consider the objection, which  
17 hearing shall be held after notice by registered or certified mail  
18 or by any method of delivery that requires a receipt or signature  
19 confirmation to the objectors and the applicant. After  
20 consideration of the evidence presented at the hearing, the  
21 ~~director~~ secretary shall issue an order authorizing the replugging  
22 of the well if the ~~director~~ secretary determines that replugging of  
23 the well will permit the safe mining through of ~~such~~ the well.

1 ~~Such~~ The order shall specify the manner in which the well shall be  
2 replugged and copies thereof shall be sent by registered or  
3 certified mail or by any method of delivery that requires a receipt  
4 or signature confirmation to the applicant and objectors. The  
5 ~~director~~ secretary shall issue an order rejecting the application  
6 if the ~~director~~ secretary determines that the proposed method for  
7 replugging the well will not permit the safe mining through of ~~such~~  
8 the well;

9 ~~(f)~~ (g) All persons adversely affected by a determination or  
10 order of the ~~director~~ secretary issued pursuant to the provisions  
11 of this section shall be entitled to judicial review in accordance  
12 with the provisions of articles five and six, chapter twenty-nine-a  
13 of this code.

14 **§22-6-25. Introducing liquid pressure into producing strata to**  
15 **recover oil contained therein.**

16 The owner or operator of any well or wells which produce oil  
17 or gas may allow ~~such~~ the well or wells to remain open for the  
18 purpose of introducing water or other liquid pressure into and upon  
19 the producing strata for the purpose of recovering the oil  
20 contained therein and may drill additional wells for like purposes,  
21 *Provided* That the introduction of such water or other liquid  
22 pressure shall be controlled as to volume and pressure and shall be  
23 through casing or tubing which shall be so anchored and packed that

1 no water-bearing strata or other oil or gas-bearing sand or  
2 producing stratum above or below the producing strata into and upon  
3 which ~~such~~ the pressure is introduced shall be affected thereby,  
4 fulfilling requirements as set forth ~~under~~ in section fourteen.

5 **§22-6-26. Performance bonds; corporate surety or other security.**

6 (a) No permit shall be issued pursuant to this article unless  
7 a bond as described in subsection (d) of this section which is  
8 required for a particular activity by this article is or has been  
9 furnished as provided in this section.

10 (b) A separate bond as described in subsection (d) of this  
11 section may be furnished for a particular oil or gas well or for a  
12 particular well for the introduction of liquids for the purposes  
13 provided in section twenty-five of this article. A separate bond  
14 as described in subsection (d) of this section shall be furnished  
15 for each well drilled or converted for the introduction of liquids  
16 for the disposal of pollutants or the effluent therefrom. Each of  
17 these bonds shall be in the sum of ~~five thousand dollars,~~ \$5,000  
18 payable to the State of West Virginia, conditioned on full  
19 compliance with all laws, rules relating to the drilling,  
20 redrilling, deepening, casing, and stimulating of oil and gas wells  
21 (or, if applicable, with all laws, rules relating to drilling or  
22 converting wells for the introduction of liquids for the purposes  
23 provided in section twenty-five of this article or for the

1 introduction of liquids for the disposal of pollutants or the  
2 effluent therefrom) and to the plugging, abandonment, and  
3 reclamation of wells and for furnishing such reports and  
4 information as may be required by the ~~director~~ secretary.

5 (c) When an operator makes or has made application for permits  
6 to drill or stimulate a number of oil and gas wells or to drill or  
7 convert a number of wells for the introduction of liquids for the  
8 purposes provided in section twenty-five of this article, the  
9 operator may, in lieu of furnishing a separate bond, furnish a  
10 blanket bond in the sum of ~~fifty thousand dollars,~~ \$50,000 payable  
11 to the State of West Virginia and conditioned as aforesaid in  
12 subsection (b) of this section.

13 (d) The form of the bond required by this article shall be  
14 approved by the ~~director~~ secretary and may include, at the option  
15 of the operator, surety bonding, collateral bonding (including cash  
16 and securities) letters of credit, establishment of an escrow  
17 account, self-bonding or a combination of these methods. If  
18 collateral bonding is used, the operator may elect to deposit cash,  
19 or collateral securities or certificates as follows: Bonds of the  
20 United States or its possessions, of the federal land bank or of  
21 the homeowners' loan corporation; full faith and credit general  
22 obligation bonds of the State of West Virginia or other states ~~and~~  
23 or of any county, district or municipality of the State of West

1 Virginia or other states; or certificates of deposit in a bank in  
2 this state, which certificates shall be in favor of the ~~division~~  
3 department. The cash deposit or market value of ~~such~~ the  
4 securities or certificates shall be equal to or greater than the  
5 amount of the bond. The ~~director~~ secretary shall, upon receipt of  
6 any ~~such~~ deposit of cash, securities or certificates, promptly  
7 place the same with the Treasurer of the State of West Virginia  
8 whose duty it shall be to receive and hold the same in the name of  
9 the state in trust for the purpose of which the deposit is made  
10 when the permit is issued. The operator shall be entitled to all  
11 interest and income earned on the collateral securities filed by  
12 such operator. The operator making the deposit shall be entitled  
13 from time to time to receive from the State Treasurer, upon the  
14 written approval of the ~~director~~ secretary, the whole or any  
15 portion of any cash, securities or certificates so deposited, upon  
16 depositing with the State Treasurer in lieu thereof cash or other  
17 securities or certificates of the classes herein specified having  
18 value equal to or greater than the amount of the bond.

19 (e) When an operator has furnished a separate bond from a  
20 corporate bonding or surety company to drill, fracture or stimulate  
21 an oil or gas well and the well produces oil or gas or both, its  
22 operator may deposit with the ~~director~~ secretary cash from the sale  
23 of the oil or gas or both until the total deposited is \$5,000.



1 When the sum of the cash deposited is \$5,000, the separate bond for  
2 the well shall be released by the ~~director~~ secretary. Upon receipt  
3 of ~~such~~ that cash, the ~~director~~ secretary shall immediately deliver  
4 ~~the same~~ it to the Treasurer of the State of West Virginia. The  
5 State Treasurer shall hold ~~such~~ the cash in the name of the state  
6 in trust for the purpose for which the bond was furnished and the  
7 deposit was made. The operator shall be entitled to all interest  
8 and income which may be earned on the cash deposited so long as the  
9 operator is in full compliance with all laws and rules relating to  
10 the drilling, redrilling, deepening, casing, plugging, abandonment,  
11 and reclamation of the well for which the cash was deposited and so  
12 long as the operator has furnished all reports and information as  
13 may be required by the ~~director~~ secretary. If the cash realized  
14 from the sale of oil or gas or both from the well is not sufficient  
15 for the operator to deposit with the ~~director~~ secretary the sum of  
16 \$10,000 within one year of the day the well started producing, the  
17 corporate or surety company which issued the bond on the well may  
18 notify the operator and the ~~director~~ secretary of its intent to  
19 terminate its liability under its bond. The operator then shall  
20 have thirty days to furnish a new bond from a corporate bonding or  
21 surety company or collateral securities or other forms of security,  
22 as provided in ~~the next preceding paragraph of~~ this section with  
23 the ~~director~~ secretary. If a new bond or collateral securities or

1 other forms of security are furnished by the operator, the  
2 liability of the corporate bonding or surety company under the  
3 original bond shall terminate as to any acts and operations of the  
4 operator occurring after the effective date of the new bond or the  
5 date the collateral securities or other forms of security are  
6 accepted by the Treasurer of the State of West Virginia. If the  
7 operator does not furnish a new bond or collateral securities or  
8 other forms of security with the secretary, as provided in ~~the next~~  
9 ~~preceding paragraph of this section, with the director,~~ the  
10 operator shall immediately plug, fill and reclaim the well in  
11 accordance with all of the provisions of law and rules applicable  
12 thereto. In such case, the corporate or surety company which  
13 issued the original bond shall be liable for any plugging, filling  
14 or reclamation not performed in accordance with such laws and  
15 rules.

16 (f) Any separate bond furnished for a particular well prior to  
17 the effective date of this chapter shall continue to be valid for  
18 all work on the well ~~permitting~~ permitted prior to the July 11,  
19 1985; but no permit shall hereafter be issued on such a particular  
20 well without a bond complying with the provisions of this section.  
21 Any blanket bond furnished prior to July 11, 1985 shall be replaced  
22 with a new blanket bond conforming to the requirements of this  
23 section, at which time the prior bond shall be discharged by

1 operation of law; and if the ~~director~~ secretary determines that any  
2 operator has not furnished a new blanket bond, the ~~director~~  
3 secretary shall notify the operator by ~~certified mail, return~~  
4 ~~receipt requested~~ registered or certified mail or by any method of  
5 delivery that requires a receipt or signature confirmation of the  
6 requirement for a new blanket bond, and failure to submit a new  
7 blanket bond within sixty days after receipt of the notice from the  
8 ~~director~~ secretary shall work a forfeiture under subsection (i) of  
9 this section of the blanket bond furnished prior to July 11, 1985.

10 (g) Any such bond shall remain in force until released by the  
11 ~~director~~ secretary, and the ~~director~~ secretary shall release the  
12 same upon satisfaction that the conditions thereof have been fully  
13 performed. Upon the release of any such bond, any cash or  
14 collateral securities deposited shall be returned by the ~~director~~  
15 secretary to the operator who deposited ~~same~~ it.

16 (h) Whenever the right to operate a well is assigned or  
17 otherwise transferred, the assignor or transferor shall notify the  
18 department of the name and address of the assignee or transferee by  
19 ~~certified mail, return receipt requested~~ registered or certified  
20 mail or by any method of delivery that requires a receipt or  
21 signature confirmation not later than five days after the date of  
22 the assignment or transfer. No assignment or transfer by the owner  
23 shall relieve the assignor or transferor of the obligations and

1 liabilities unless and until the assignee or transferee files with  
2 the department the well name and the permit number of the subject  
3 well, the county and district in which the subject well is located,  
4 the names and addresses of the assignor or transferor, and assignee  
5 or transferee, a copy of the instrument of assignment or transfer  
6 accompanied by the applicable bond, cash, collateral security or  
7 other forms of security described in section twelve, fourteen,  
8 twenty-three or twenty-six of this article, and the name and  
9 address of the assignee's or transferee's designated agent if  
10 assignee or transferee would be required to designate such an agent  
11 under section ~~six~~ three of this article, if assignee or transferee  
12 were an applicant for a permit under ~~said~~ section ~~six~~ three. Every  
13 well operator required to designate an agent under this section  
14 shall, within five days after the termination of such designation,  
15 notify the department of such termination and designate a new  
16 agent.

17       Upon compliance with the requirements of this section by  
18 assignor or transferor and assignee or transferee, the ~~director~~  
19 secretary shall release assignor or transferor from all duties and  
20 requirements of this article and ~~the deputy director~~ shall give  
21 written notice of release ~~unto~~ assignor or transferor of any bond  
22 and return ~~unto~~ assignor or transferor any cash or collateral  
23 securities deposited pursuant to section twelve, fourteen, twenty-

1 three or twenty-six of this article.

2 (i) If any of the requirements of this article or rules  
3 promulgated pursuant thereto or the orders of the ~~director~~  
4 secretary have not been complied with within the time limit set by  
5 the violation notice as defined in sections ~~three, four and five~~  
6 eleven, twenty-eight or thirty-four of this article, the  
7 performance bond shall then be forfeited.

8 (j) When any bond is forfeited pursuant to the provisions of  
9 this article or rules promulgated pursuant thereto, the ~~director~~  
10 secretary ~~shall give notice to the Attorney General who shall~~  
11 collect the forfeiture without delay.

12 (k) All forfeitures shall be deposited in the Treasury of the  
13 State of West Virginia in the ~~special~~ Oil and Gas Reclamation Fund  
14 as defined in section twenty-nine of this article.

15 **§22-6-27. Cause of action for damages caused by explosions.**

16 Any person suffering personal injury or property damage due to  
17 any explosion caused by any ~~permittee,~~ operator shall have a cause  
18 of action against ~~such permittee~~ the operator for three years after  
19 the explosion, regardless of when the explosion occurred.

20 ~~§22-6-28. Supervision by director over drilling and reclamation~~  
21 ~~operations; complaints; hearings; appeals.~~

22 ~~(a) The director shall exercise supervision over the drilling,~~  
23 ~~casing, plugging, filling and reclamation of all wells and shall~~

~~1 have such access to the plans, maps and other records and to the  
2 properties of the well operators as may be necessary or proper for  
3 this purpose, and, either as the result of its own investigations  
4 or pursuant to charges made by any well operator or coal operator,  
5 the director may enter, or shall permit any aggrieved person to  
6 file before the director, a formal complaint charging any well  
7 operator with not drilling or casing, or not plugging or filling,  
8 or reclaiming any well in accordance with the provisions of this  
9 article, or to the order of the director. True copies of any such  
10 complaints shall be served upon or mailed by registered mail to any  
11 person so charged, with notice of the time and place of hearing, of  
12 which the operator or operators so charged shall be given at least  
13 five days' notice. At the time and place fixed for hearing, full  
14 opportunity shall be given any person so charged or complaining to  
15 be heard and to offer such evidence as desired, and after a full  
16 hearing, at which the director may offer in evidence the results of  
17 such investigations as the director may have made, the director  
18 shall make findings of fact and enter such order as in the  
19 director's judgment is just and right and necessary to secure the  
20 proper administration of this article, and if the director deems  
21 necessary, restraining the well operator from continuing to drill  
22 or case any well or from further plugging, filling or reclaiming  
23 the same, except under such conditions as the director may impose~~

1 ~~in order to ensure a strict compliance with the provisions of this~~  
2 ~~article relating to such matters.~~

3 ~~(b) Except as provided in subsection (c) of this section, any~~  
4 ~~well operator or coal operator adversely affected by a final~~  
5 ~~decision or order of the director, may appeal in the manner~~  
6 ~~prescribed in section four, article five, chapter twenty-nine-a of~~  
7 ~~this code.~~

8 ~~(c) Any person having an interest which is or may be adversely~~  
9 ~~affected, or who is aggrieved by an order of the director, or by~~  
10 ~~the issuance or denial of a permit, or by the permit's terms and~~  
11 ~~conditions, where the subject to such order, permits or terms and~~  
12 ~~conditions is solid waste, may appeal to the environmental quality~~  
13 ~~board in the same manner as appeals are taken under the solid waste~~  
14 ~~management act, section sixteen, article fifteen of this chapter.~~  
15 ~~For the purpose of this subsection the term solid waste has the~~  
16 ~~same meaning as would be given that term pursuant to section two,~~  
17 ~~article fifteen of this chapter but for the exemption related to~~  
18 ~~waste or material regulated by this chapter, chapter twenty-two-b~~  
19 ~~or chapter twenty-two-c of this code.~~

20 **§22-6-28. Notice of violation; procedure and actions; enforcement;**  
21 **permit revocation and bond forfeiture; civil and**  
22 **criminal penalties; appeals; prosecution; injunctive**  
23 **relief.**

1       (a) If an owner or operator has not complied with any of the  
2 requirements of this article or article eleven of this chapter,  
3 rules promulgated pursuant thereto or permit conditions, the  
4 secretary shall cause a notice of violation to be served upon the  
5 operator or the operator's duly authorized agent as notices are  
6 served pursuant to the provisions the West Virginia Rules of Civil  
7 Procedure to the permanent address shown on the application for the  
8 permit. The notice shall specify in what respects the operator has  
9 failed to comply with this article or article eleven of this  
10 chapter, rules or permit conditions and shall specify a reasonable  
11 time for abatement of the violation not to exceed seven days. If  
12 the operator has not abated the violation within the time specified  
13 in the notice, or any reasonable extension thereof not to exceed  
14 thirty days, the secretary may order the cessation of the  
15 operation, unless the operator affirmatively demonstrates that  
16 compliance is unattainable due to conditions totally beyond the  
17 control of the operator. If a violation is not abated within the  
18 time specified or any extension thereof, or if any cessation order  
19 is issued, a mandatory civil penalty of up to \$10,000 per day per  
20 violation shall be assessed. A cessation order remains in effect  
21 until the secretary determines that the violation has been abated  
22 or until modified, vacated or terminated by the secretary or by a  
23 court. In any cessation order issued pursuant to this subsection,



1 the secretary shall determine the steps necessary to abate the  
2 violation in the most expeditious manner possible and shall include  
3 the necessary measures in the order.

4 (b) If the secretary determines that a pattern of violations  
5 of any requirement of this article or article eleven of this  
6 chapter or any permit condition exists or has existed as a result  
7 of the operator's lack of reasonable care and diligence, or that  
8 the violations are willfully caused by the operator, the secretary  
9 shall immediately issue an order directing the operator to show  
10 cause why the operation should not be suspended or revoked and  
11 giving the operator thirty days in which to request a hearing. If  
12 a hearing is requested, the secretary shall inform all interested  
13 parties of the time and place of the hearing. Any hearing  
14 conducted pursuant to this section shall be recorded and is subject  
15 to the provisions of chapter twenty-nine-a of this code. Within  
16 sixty days following the hearing, the secretary shall issue and  
17 furnish to the operator and all other parties to the hearing a  
18 written decision, and the reasons therefor, concerning suspension  
19 or revocation of the operation. Upon the operator's failure to  
20 show cause why the right to operate should not be suspended or  
21 revoked, the secretary shall immediately suspend or revoke the  
22 operator's right to operate the well(s) at issue. If the right to  
23 operate is revoked, the secretary shall initiate procedures in

1 accordance with rules promulgated by the secretary to forfeit the  
2 entire amount of the operator's bond or other security posted  
3 pursuant to section twenty-six of this article, and collect the  
4 forfeiture without delay: *Provided*, That the entire proceeds of  
5 such forfeiture shall be deposited with the State Treasurer to the  
6 credit of the Oil and Gas Reclamation Fund; *Provided, however*, That  
7 any excess therefrom shall remain in the Oil and Gas Reclamation  
8 Fund.

9 (c) Any operator who violates any permit condition or who  
10 violates any other provision of this article or article eleven of  
11 this chapter or the rules promulgated pursuant thereto may also be  
12 assessed a civil penalty. The penalty may not exceed \$10,000.  
13 Each day of continuing violation may be deemed a separate violation  
14 for purposes of penalty assessments. In determining the amount of  
15 the penalty, consideration shall be given to the operator's history  
16 of previous violations; the seriousness of the violation, including  
17 any irreparable or significant harm to the environment and any  
18 hazard to the health or safety of the public; whether the operator  
19 was negligent; and the demonstrated good faith of the operator  
20 charged in attempting to achieve rapid compliance after  
21 notification of the violation.

22 (d) (1) Upon the issuance of a notice or order pursuant to  
23 this section, the assessment officer shall, within thirty days, set

1 a proposed penalty assessment, if any, and notify the operator in  
2 writing of such proposed penalty assessment. Any proposed penalty  
3 assessment must be paid in full within thirty days of receipt or,  
4 if the operator wishes to contest either the amount of the penalty  
5 or the fact of violation, it may request an informal conference  
6 with the assessment officer within fifteen days or a formal hearing  
7 before the secretary within thirty days. The notice of proposed  
8 penalty assessment shall advise the operator of the right to an  
9 informal conference and a formal hearing pursuant to this section.  
10 When the operator requests an informal conference, it has fifteen  
11 days from receipt of the assessment officer's decision to request  
12 a formal hearing before the secretary.

13 (A) When an informal conference is held, the assessment  
14 officer has authority to affirm, modify or vacate the notice, order  
15 or proposed penalty assessment.

16 (B) When a formal hearing is requested, the amount of the  
17 proposed penalty assessment shall be forwarded to the secretary for  
18 placement in an escrow account. Formal hearings shall be of record  
19 and subject to the provisions of article five, chapter  
20 twenty-nine-a of this code. Following the hearing, the order or  
21 proposed penalty assessment shall be affirmed, modified or vacated  
22 and, when appropriate, shall incorporate an assessment order  
23 requiring that the assessment be paid.

1       (2) Civil penalties owed pursuant to this section may be  
2 recovered by the secretary in the circuit court of Kanawha County.  
3 In any such action, the state, or any agency of the state that  
4 prevails, may be awarded costs and reasonable attorney's fees.  
5 Civil penalties collected pursuant to this article shall be  
6 deposited with the State Treasurer to the credit of the Oil and Gas  
7 Operating Permit and Processing Fund established in section twenty-  
8 nine of this article. If, through administrative or judicial  
9 review of the proposed penalty, it is determined that no violation  
10 occurred or that the amount of the penalty should be reduced, the  
11 secretary shall, within thirty days, remit the appropriate amount  
12 to the person, with interest at the rate of six percent or at the  
13 prevailing United States Department of the Treasury rate, whichever  
14 is greater. Failure to forward the money to the secretary within  
15 thirty days is a waiver of all legal rights to contest the  
16 violation or the amount of the penalty.

17       (e) Any operator whose interest is or may be adversely  
18 affected by any order of the secretary may file an appeal in  
19 accordance with the provisions of article five, chapter twenty-  
20 nine-a of this code, within thirty days after receipt of the order.

21       (f) The filing of an appeal or a request for an informal  
22 conference or formal hearing provided for in this section does not  
23 stay execution of the order appealed from. Pending completion of

1 the investigation and conference or hearing required by this  
2 section, the operator may file with the secretary a written request  
3 that the secretary grant temporary relief from any notice or order  
4 issued under this section or sections eleven, twenty-eight or  
5 thirty-four of this article, together with a detailed statement  
6 giving reasons for granting such relief. The secretary shall issue  
7 an order or decision granting or denying such relief expeditiously:  
8 Provided, That where the operator requests relief from a cessation  
9 order, the decision on the request shall be issued within five days  
10 of its receipt. The secretary may grant such relief under such  
11 conditions as he or she may prescribe if:

12 (1) All parties to the proceedings have been notified and  
13 given an opportunity to be heard on a request for temporary relief;

14 (2) The person requesting the relief shows that there is a  
15 substantial likelihood that he will prevail on the merits in the  
16 final determination of the proceedings;

17 (3) The relief will not adversely affect the public health or  
18 safety or cause significant imminent environmental harm to land,  
19 air or water resources; and

20 (4) The relief sought is not the issuance of a permit where a  
21 permit has been denied, in whole or in part, by the secretary.

22 (g) Any person who willfully and knowingly violates a  
23 condition of a permit issued pursuant to this article or article

1 eleven of this chapter or rules promulgated pursuant thereunder, or  
2 fails or refuses to comply with any order issued under those  
3 articles and rules or any order incorporated in a final decision  
4 issued by the secretary, is guilty of a misdemeanor and, upon  
5 conviction thereof, shall be fined not less than \$5,000 nor more  
6 than \$10,000 or imprisoned in the county jail not more than one  
7 year or both fined and imprisoned.

8 (h) Whenever a corporate operator violates a condition of a  
9 permit issued pursuant to this article, rules promulgated pursuant  
10 thereto, or any order incorporated in a final decision issued by  
11 the secretary, any director, officer or agent of the corporation  
12 who willfully and knowingly authorized, ordered or carried out the  
13 failure or refusal is subject to the same civil penalties, fines  
14 and imprisonment that may be imposed upon a person pursuant to  
15 subsections (c) and (g) of this section.

16 (i) Any person who knowingly makes any false statement,  
17 representation or certification or knowingly fails to make any  
18 statement, representation or certification in any application,  
19 petition, record, report, plan or other document filed or required  
20 to be maintained pursuant to this article or rules promulgated  
21 pursuant thereto is guilty of a misdemeanor and, upon conviction  
22 thereof, shall be fined not less than \$5,000 nor more than \$10,000  
23 or imprisoned in the county jail not more than one year or both

1 fined and imprisoned.

2 (j) Whenever any person: (A) violates or fails or refuses to  
3 comply with any order or decision issued by the secretary pursuant  
4 to this article; or (B) interferes with, hinders or delays the  
5 secretary in carrying out the provisions of this article; or (C)  
6 refuses to admit the secretary to the property where the well or  
7 its associated activities are located; or (D) refuses to permit  
8 inspection of the operation by the secretary; or (E) refuses to  
9 furnish any reasonable information or report requested by the  
10 secretary in furtherance of the provisions of this article; or (F)  
11 refuses to permit access to, and copying of, such records as the  
12 secretary determines necessary in carrying out the provisions of  
13 this article; or (G) violates any other provisions of this article,  
14 the rules promulgated pursuant thereto or the terms and conditions  
15 of any permit, the secretary or the prosecuting attorney of the  
16 county in which the permit area is located may institute a civil  
17 action for relief, including a permanent or temporary injunction,  
18 restraining order or any other appropriate order in the circuit  
19 court of Kanawha County or any court of competent jurisdiction to  
20 compel compliance with and enjoin such violations, failures or  
21 refusals. The court or the judge thereof in vacation may issue a  
22 preliminary injunction in any case pending a decision on the merits  
23 of any application filed without requiring the filing of a bond or

1 other equivalent security.

2 (k) Any person who, except as permitted by law, willfully  
3 resists, prevents, impedes or interferes with the secretary or any  
4 of his or her agents in the performance of their duties pursuant to  
5 this article is guilty of a misdemeanor and, upon conviction  
6 thereof, shall be punished by a fine of not more than \$5,000 or by  
7 imprisonment for not more than one year or both.

8 **§22-6-29. Operating permit and processing fund; special**  
9 **reclamation fund; fees.**

10 (a) There is hereby continued within the Treasury of the State  
11 of West Virginia the special fund known as the Oil and Gas  
12 Operating Permit and Processing Fund, and the secretary shall  
13 deposit with the State Treasurer to the credit of ~~such~~ that special  
14 fund all fees collected ~~under~~ pursuant to the provisions of  
15 subdivision ten, subsection (c), section two of this article.

16 (1) The Oil and Gas Operating Permit and Processing Fund shall  
17 be administered by the secretary for the purposes of carrying out  
18 the provisions of this chapter.

19 (2) The secretary shall make an annual report to the Governor  
20 and to the Legislature on the use of the fund and shall make a  
21 detailed accounting of all expenditures from the Oil and Gas  
22 Operating Permit and Processing Fund.

23 (b) In addition to any other fees required by the provisions



1 of this article, every applicant for a permit to drill a well  
2 shall, before the permit is issued, pay to the secretary a special  
3 reclamation fee of ~~one hundred fifty dollars~~ \$150 for each activity  
4 for which a well work application is required to be filed:  
5 *Provided*, That a special reclamation fee shall not be assessed for  
6 plugging activities. ~~Such~~ The special reclamation fee shall be  
7 paid at the time the application for a drilling permit is filed  
8 with the secretary, and ~~the~~ payment of ~~such~~ the special reclamation  
9 fee shall be a condition precedent to the issuance of said permit.

10 (c) There is hereby continued within the Treasury of the State  
11 of West Virginia the special fund known as the Oil and Gas  
12 Reclamation Fund, and the secretary shall deposit with the State  
13 Treasurer to the credit of ~~such~~ that special fund all special  
14 reclamation fees collected. The proceeds of any bond forfeited  
15 under the provisions of this article shall inure to the benefit of  
16 and shall be deposited in such Oil and Gas Reclamation Fund.

17 (d) The Oil and Gas Reclamation Fund shall be administered by  
18 the secretary. The secretary shall cause to be prepared plans for  
19 the reclaiming and plugging of abandoned wells which have not been  
20 reclaimed or plugged or which have been improperly reclaimed or  
21 plugged. The secretary, as funds become available in the Oil and  
22 Gas Reclamation Fund, shall reclaim and properly plug wells in  
23 accordance with ~~said~~ those plans and specifications and in

1 accordance with the provisions of this article relating to the  
2 reclaiming and plugging of wells and all rules promulgated  
3 thereunder. ~~Such~~ Those funds may also be utilized for the purchase  
4 of abandoned wells, where such purchase is necessary, and for the  
5 reclamation of such abandoned wells, and for any engineering,  
6 administrative, and research costs as may be necessary to properly  
7 effectuate the reclaiming and plugging of all wells, abandoned or  
8 otherwise.

9 (e) The secretary may avail the ~~division~~ department of any  
10 federal funds provided on a matching basis that may be made  
11 available for the purpose of reclaiming or plugging any wells.

12 (f) The secretary shall make an annual report to the Governor  
13 and to the Legislature setting forth the number of wells reclaimed  
14 or plugged through the use of the Oil and Gas Reclamation Fund  
15 provided for herein. ~~Such~~ The report shall identify each ~~such~~  
16 reclamation and plugging project, state the number of wells  
17 reclaimed or plugged thereby, show the county wherein such wells  
18 are located, and ~~shall~~ make a detailed accounting of all  
19 expenditures from the Oil and Gas Reclamation Fund.

20 (g) All wells shall be reclaimed or plugged by contract  
21 entered into by the secretary on a competitive bid basis as  
22 provided for under the provisions of article three, chapter five-a  
23 of this code and the rules promulgated thereunder.

1 **§22-6-30. Reclamation requirements.**

2 The operator of a well shall reclaim the land surface within  
3 the area disturbed in siting, drilling, completing or producing the  
4 well in accordance with the following requirements:

5 (a) Within six months after the completion of the drilling  
6 process, the operator shall fill all the pits and impoundments for  
7 ~~containing muds, cuttings, salt water, and oil that are not needed~~  
8 ~~for production purposes, or~~ are not required or allowed by state or  
9 federal law or rule or agreement between the operator and the  
10 surface owner that allows the impoundment to remain open for the  
11 use and benefit of the surface owner (i.e. a farm pond as described  
12 in section five above) and remove all concrete bases, drilling  
13 supplies, and drilling equipment. Within ~~such~~ that period, the  
14 operator shall grade or terrace and plant, seed or sod the area  
15 disturbed that is not required in production of the well where  
16 necessary to bind the soil and prevent substantial erosion and  
17 sedimentation. No pit may be used for the ultimate disposal of  
18 salt water. Salt water and oil shall be periodically drained or  
19 removed and properly disposed of from any pit that is retained, so  
20 the pit is kept reasonably free of salt water and oil. Any  
21 impoundment that is intended to be left permanent shall meet the  
22 requirements set forth by the United States Department of  
23 Agriculture's Natural Resources Conservation Service "Conservation

1 Practice Standard - Ponds" (Code 378). No pits may be left  
2 permanent.

3 (b) For multiple well pads, reclamation shall be completed  
4 within six months after the completion of the drilling process for  
5 a well, unless the operator commences drilling on a subsequent well  
6 within six months.

7 ~~(b)~~ (c) Within six months after a well that has produced oil  
8 or gas is plugged or after the plugging of a dry hole, the operator  
9 shall remove all production and storage structures, supplies and  
10 equipment and any oil, salt water, and debris and fill any  
11 remaining excavations. Within ~~such~~ that period, the operator shall  
12 grade or terrace and plant, seed or sod the area disturbed where  
13 necessary to bind the soil and prevent substantial erosion and  
14 sedimentation.

15 ~~The director may, upon written application by an operator~~  
16 ~~showing reasonable cause, extend the period within which~~  
17 ~~reclamation shall be completed, but not to exceed a further six-~~  
18 ~~month period.~~

19 ~~If the director refuses to approve a request for extension,~~  
20 ~~the refusal shall be by order.~~

21 ~~(c)~~ (d) (1) It shall be the duty of ~~an~~ the operator to commence  
22 the reclamation of the area of land disturbed in siting, drilling,  
23 completing or producing the well in accordance with soil erosion

1 and sediment control plans approved by the ~~director~~ secretary or  
 2 the ~~director's designate~~ secretary's designee.

3 (2) The secretary, upon written application by an operator  
 4 showing reasonable cause, may extend the period within which  
 5 reclamation shall be completed, but not to exceed a further six-  
 6 month period.

7 (3) If the secretary refuses to approve a request for  
 8 extension, the refusal shall be by order.

9 ~~(d)~~ (e) The ~~director~~ secretary shall promulgate rules setting  
 10 forth requirements for the safe and efficient installation and  
 11 burying of all production and gathering pipelines where practical  
 12 and reasonable, except that ~~such~~ those rules shall not apply to  
 13 those pipelines regulated by the Public Service Commission.

14 **§22-6-31. Preventing waste of gas; plan of operation required**

15 **for wasting gas in process of producing oil;**  
 16 **rejection thereof.**

17 Natural gas shall not be permitted to waste or escape from any  
 18 well or pipeline<sup>7</sup> when it is reasonably possible to prevent ~~such~~  
 19 that waste, after the owner or operator of ~~such~~ the gas<sup>7</sup> or well<sup>7</sup>,  
 20 or pipeline has had a reasonable length of time to shut in ~~such~~ the  
 21 gas in the well or make the necessary repairs to ~~such~~ the well or  
 22 pipeline to prevent ~~such~~ waste: *Provided*, That (a) If, in the  
 23 process of drilling a well for oil or gas<sup>7</sup> or both, gas is found in

1 ~~such~~ the well and the owner or operator thereof desires to continue  
2 to search for oil or gas, or both, by drilling deeper in search of  
3 lower oil or gas-bearing strata, or (b) If it becomes necessary to  
4 make repairs to any well producing gas, commonly known as "cleaning  
5 out," and if in either event it is necessary for the gas in ~~such~~  
6 the well to escape therefrom during the process of drilling or  
7 making repairs, as the case may be, then the owner or operator of  
8 ~~such~~ the well shall prosecute ~~such~~ the drilling or repairs with  
9 reasonable diligence so that the waste of gas from the well shall  
10 not continue longer than reasonably necessary, and if, during the  
11 progress of ~~such~~ the deeper drilling or repairs, any temporary  
12 suspension thereof becomes necessary, the owner or operator of ~~such~~  
13 the well shall use all reasonable means to shut in the gas and  
14 prevent its waste during ~~such~~ the temporary suspension: *Provided,*  
15 *however,* That in all cases where both oil and gas are found and  
16 produced from the same oil and gas-bearing stratum, and where it is  
17 necessary for the gas therefrom to waste in the process of  
18 producing the oil, the owner or operator shall use all reasonable  
19 diligence to conserve and save from waste so much of ~~such~~ the gas  
20 as it is reasonably possible to save, but in no case shall ~~such~~  
21 the gas from any well be wasted in the process of producing oil  
22 therefrom until the owner or operator of ~~such~~ the well ~~shall have~~  
23 has filed with the ~~director~~ secretary a plan of operation for ~~said~~

1 the well showing, among other things, the gas-oil production ratio  
2 involved in ~~such~~ the operation, which plan shall govern the  
3 operation of ~~said~~ the well unless the ~~director~~ secretary shall,  
4 within ten days from the date on which ~~such~~ the plan is submitted  
5 to the ~~director~~ secretary, make a finding that ~~such~~ the plan fails,  
6 under all the facts and circumstances, to propose the exercise of  
7 all reasonable diligence to conserve and save from waste so much of  
8 ~~such~~ the gas as it is reasonably possible to save, in which event  
9 production of oil at ~~such~~ the well by the wasting of gas shall  
10 cease and desist until a plan of operation is approved by the  
11 ~~director~~ secretary. Successive plans of operation may be filed by  
12 the owner or operator of any ~~such~~ well with the ~~director~~ secretary.

13 **§22-6-32. Right of adjacent owner or operator to prevent waste of**  
14 **gas; recovery of cost.**

15 (a) If the owner or operator of any ~~such~~ well shall neglect or  
16 refuse to drill, case and equip, ~~or~~ plug and abandon or shut in and  
17 conserve from waste the gas produced therefrom, as required to be  
18 done and performed by the preceding sections of this article, for  
19 a period of twenty days after a written notice so to do, which  
20 notice may be served personally upon the owner or operator or may  
21 be posted in a conspicuous place at or near the well, it shall be  
22 lawful for the owner or operator of any adjacent or neighboring  
23 lands or the ~~director~~ secretary to enter upon the premises where

1 ~~such~~ the well is situated and properly case and equip ~~such~~ the  
2 well, or, in case the well is to be abandoned, to properly plug and  
3 abandon it, or, in case the well is wasting gas, to properly shut  
4 it in and make ~~such~~ any needed repairs to the well to prevent the  
5 waste of gas, in the manner required ~~to be done~~ by the preceding  
6 sections of this article. ~~and the~~ The reasonable cost and expense  
7 incurred by an owner or operator or the ~~director~~ secretary in so  
8 doing shall be paid by the owner or operator of ~~such~~ the well and  
9 may be recovered as debts of like amount are by law recoverable.

10 (b) The ~~director~~ secretary may utilize funds and procedures  
11 established pursuant to section twenty-nine of this article for the  
12 purposes set out in ~~the~~ this section. Amounts recovered by the  
13 ~~director~~ secretary pursuant to this section shall be deposited in  
14 the Oil and Gas Reclamation Fund established pursuant to section  
15 twenty-nine of this article.

16 **§22-6-33. Restraining waste.**

17 Aside from and in addition to the imposition of any penalties  
18 under this article, it shall be the duty of any circuit court in  
19 the exercise of its equity jurisdiction to hear and determine any  
20 action which may be filed to restrain the waste of natural gas in  
21 violation of this article, and to grant relief by injunction or by  
22 other decrees or orders, in accordance with the principles and  
23 practice in equity. The plaintiff in ~~such~~ that action shall have



1 sufficient standing to maintain the same if the condition or  
2 practice exists or that any operator is in violation of any  
3 requirements of this article or any permit condition plaintiff  
4 shall aver and prove that the plaintiff is interested in the lands  
5 situated within the distance of one mile from ~~such~~ the well, either  
6 as an owner of ~~such~~ the land or of the oil or gas or both  
7 ~~thereunder,~~ in fee simple or as an owner of leases thereof or of  
8 rights therein for the production of oil and gas or either of them  
9 or as the ~~director~~ secretary.

10 ~~§22-6-34. Offenses; penalties.~~

11 ~~(a) Any person or persons, firm, partnership, partnership~~  
12 ~~association or corporation who willfully violates any provision of~~  
13 ~~this article or any rule or order promulgated hereunder shall be~~  
14 ~~subject to a civil penalty not exceeding two thousand five hundred~~  
15 ~~dollars. Each day a violation continues after notice by the~~  
16 ~~division constitutes a separate offense. The penalty shall be~~  
17 ~~recovered by a civil action brought by the division, in the name of~~  
18 ~~the state, before the circuit court of the county in which the~~  
19 ~~subject well or facility is located. All such civil penalties~~  
20 ~~collected shall be credited to the General Fund of the state.~~

21 ~~(b) Any person or persons, firm, partnership, partnership~~  
22 ~~association or corporation willfully violating any of the~~  
23 ~~provisions of this article which prescribe the manner of drilling~~

~~1 and casing or plugging and filling any well, or which prescribe the  
2 methods of conserving gas from waste, shall be guilty of a  
3 misdemeanor, and, upon conviction thereof, shall be punished by a  
4 fine not exceeding five thousand dollars, or imprisonment in jail  
5 for not exceeding twelve months, or both, in the discretion of the  
6 court, and prosecutions under this section may be brought in the  
7 name of the State of West Virginia in the court exercising criminal  
8 jurisdiction in the county in which the violation of such  
9 provisions of the article or terms of such order was committed, and  
10 at the instance and upon the relation of any citizens of this  
11 state.~~

12 **§22-6-34. Cessation of operation by order of inspector; informal**  
13 **conference; imposition of affirmative obligations;**  
14 **appeal.**

15 (a) Notwithstanding any other provisions of this article, an  
16 oil and gas inspector has the authority to issue a cessation order  
17 to an oil or gas operation when an inspector determines that any  
18 required by this article, which condition, practice or violation  
19 also creates an imminent danger to the health or safety of the  
20 public or is causing or can reasonably be expected to cause  
21 significant, imminent environmental harm to land, air or water  
22 resources. The cessation order shall take effect immediately.  
23 Unless waived in writing, an informal conference shall be held at

1 or near the site relevant to the violation set forth in the  
2 cessation order within twenty-four hours after the order becomes  
3 effective, or the order shall expire. The conference shall be held  
4 before a supervising oil and gas inspector, who shall, immediately  
5 upon conclusion of said conference, determine when and if the  
6 operation may resume. An operator who believes it is aggrieved by  
7 the decision of the supervising oil and gas inspector may  
8 immediately appeal to the secretary, setting forth reasons why the  
9 operation should not be halted. The secretary shall determine  
10 forthwith when the operation may be resumed.

11 (b) The cessation order shall remain in effect until the  
12 secretary determines that the condition, practice or violation has  
13 been abated or until modified, vacated or released by the  
14 secretary. Where the secretary finds that the ordered cessation  
15 will not completely abate the imminent danger to health or safety  
16 of the public or the significant imminent environmental harm to  
17 land, air or water resources, the secretary shall, in addition to  
18 the cessation order, impose affirmative obligations on the operator  
19 requiring the operator to take whatever steps the secretary  
20 determines necessary to abate the imminent danger or the  
21 significant environmental harm.

22 (c) Any cessation order issued pursuant to this section or any  
23 other provision of this article may be released by any inspector.

1 An inspector shall be readily available to terminate a cessation  
2 order upon abatement of the violation.

3 **§22-6-35. Civil action for contamination or deprivation of fresh**  
4 **water source or supply; presumption; water rights and**  
5 **replacement; waiver of replacement.**

6 (a) Nothing in this article affects in any way the rights of  
7 any person to enforce or protect, under applicable law, the  
8 person's interest in water resources affected by an oil or gas  
9 operation.

10 (b) Unless rebutted by one of the defenses established in  
11 subsection c below, ~~in~~ in any action for contamination or  
12 deprivation of a fresh water source or supply within one thousand  
13 feet of the site of drilling for an oil or gas well, there shall be  
14 a rebuttable presumption that ~~such~~ the drilling and ~~such~~ the oil or  
15 gas well or either was the proximate cause of the contamination or  
16 deprivation of ~~such~~ the fresh water source or supply.

17 (c) In order to rebut the presumption of liability established  
18 in subsection (b) above, the operator must affirmatively prove one  
19 of the following defenses:

20 (1) The pollution existed prior to the drilling or alteration  
21 activity as determined by a predrilling or prealteration survey.

22 (2) The landowner or water purveyor refused to allow the  
23 operator access to the property to conduct a predrilling or

1 prealteration survey.

2 (3) The water supply is not within one thousand feet of the  
3 well.

4 (4) The pollution occurred more than six months after  
5 completion of drilling or alteration activities.

6 (5) The pollution occurred as the result of some cause other  
7 than the drilling or alteration activity.

8 (d) Any operator electing to preserve its defenses under  
9 subdivision (c) (1) or (c) (2) above shall retain the services of an  
10 independent certified laboratory to conduct the predrilling or  
11 prealteration survey of water supplies. A copy of the results of  
12 the survey shall be submitted to the department and the landowner  
13 or water purveyor in a manner prescribed by the secretary.

14 (e) Any operator shall replace the water supply of an owner of  
15 interest in real property who obtains all or part of that owner's  
16 supply of water for domestic, agricultural, industrial or other  
17 legitimate use from an underground or surface source where the  
18 supply has been affected by contamination, diminution or  
19 interruption proximately caused by the oil or gas operation, unless  
20 waived by that owner.

21 (f) The operator conducting the oil or gas operation shall:  
22 (1) Provide an emergency drinking water supply within twenty-four  
23 hours; (2) provide temporary water supply within seventy-two hours;

1 (3) within thirty days begin activities to establish a permanent  
2 water supply or submit a proposal to the secretary outlining the  
3 measures and timetables to be utilized in establishing a permanent  
4 supply. The total time for providing a permanent water supply may  
5 not exceed two years. If the operator demonstrates that providing  
6 a permanent replacement water supply cannot be completed within two  
7 years, the secretary may extend the time frame on case-by-case  
8 basis; and (4) pay all reasonable costs incurred by the real  
9 property owner in securing a water supply.

10 (g) A real property owner as described in subsection (b) above  
11 aggrieved under the provisions of subsections (b), (c) or (d) of  
12 this section may seek relief in court.

13 (h) Notwithstanding the denial of the operator of  
14 responsibility for the damage to the real property owner's water  
15 supply or the status of any appeal on determination of liability  
16 for the damage to the real property owner's water supply, the  
17 operator may not discontinue providing the required water service  
18 until authorized to do so by the secretary.

19 **§22-6-36. Declaration of oil and gas notice by owners and lessees**  
20 **of coal seams.**

21 (a) For purposes of notification under this article, any owner  
22 or lessee of coal seams ~~shall~~ may file a declaration of the owner's  
23 or lessee's interest in ~~such~~ the coal seams with the clerk of the

1 county commission in the county where ~~such~~ the coal seams are  
2 located. ~~Said~~ The clerk shall file and index ~~such~~ the declaration  
3 in accordance with section two, article one, chapter thirty-nine of  
4 this code, and shall index the name of the owner or lessee of ~~such~~  
5 the coal seams in the grantor index of the record maintained for  
6 the indexing of leases. If the declaration of owner's or lessee's  
7 interest is not filed, then notification pursuant to this article  
8 shall be made to the owner or lessee's of coal seams of record.

9 (b) The declaration, if filed, ~~shall~~ entitles ~~such~~ the owner  
10 or lessee to the notices provided in sections twelve, thirteen,  
11 fourteen, and twenty-three of this article: *Provided*, That the  
12 declaring owner shall be the record owner of the coal seam, and the  
13 declaring lessee shall be the record lessee with the owner's or  
14 lessee's source or sources of title recorded prior to recording  
15 ~~such~~ the lessee's declaration.

16 (c) The declaration, if filed, shall be acknowledged by ~~such~~  
17 the owner or lessee and, in the case of a lessee, may be a part of  
18 the coal lease under which the lessee claims. ~~Such~~ The declaration  
19 may be in the following language:

20 "DECLARATION OF OIL AND GAS NOTICE"

21 "The undersigned hereby declares:

22 (1) The undersigned is the ('owner' or 'lessee') of one or  
23 more coal seams or workable coal beds as those terms are defined in

1 section one of this article.

2 (2) The coal seam(s) or workable coal bed(s) owned or leased  
3 partly or wholly by the undersigned lie(s) under the surface of  
4 lands described as follows:

5 (Here insert a description legally adequate for a deed,  
6 whether by metes and bounds or other locational description, or by  
7 title references such as a book and page legally sufficient to  
8 stand in lieu of a locational description.)

9 (3) The undersigned desires to be given all notices of oil and  
10 gas operations provided by sections twelve, thirteen, fourteen, and  
11 twenty-three of this article, addressed as follows:

12 (Here insert the name and mailing address of the undersigned  
13 owner or lessee.)

14

\_\_\_\_\_

15

(Signature)

16 (Here insert an acknowledgment legally adequate for a deed)."

17 The benefits of the foregoing declaration shall be personal to  
18 the declaring owner or lessee, and not transferable or assignable  
19 in any way.

20 **§22-6-37. Rules, orders and permits remain in effect.**

21 The rules promulgated and all orders and permits in effect  
22 upon the effective date of this article ~~pursuant to the provisions~~  
23 ~~of former article one, chapter twenty-two b of this code,~~ shall



1 remain in full force and effect as if ~~such~~ those rules, orders, and  
2 permits were adopted by the ~~director~~ established in this chapter  
3 secretary, but all such rules, orders, and permits shall be subject  
4 to review by the ~~director~~ secretary to ensure they are consistent  
5 with the purposes and policies set forth in this chapter.

6 **§22-6-38. Application of article; exclusions.**

7 This article shall not apply to or affect any well work  
8 permitted prior to the effective date of this article, ~~under former~~  
9 ~~article one, chapter twenty-two b of this code,~~ unless ~~such~~ the  
10 well is, after completion, whether ~~such~~ completion is prior to or  
11 subsequent to the effective date of this article, deepened  
12 subsequent to the effective date of this article through another  
13 coal seam or to another formation above the top of the uppermost  
14 member of the "Onondaga Group." ~~or to a depth of less than six~~  
15 ~~thousand feet, whichever is shallower.~~

16 **§22-6-39. Injunctive relief.**

17 (a) In addition to other remedies, and aside from various  
18 penalties provided by law, whenever it appears to the ~~director~~  
19 secretary that any person is violating or threatening to violate  
20 any provision of this article, any order or final decision of the  
21 ~~director,~~ secretary or any lawful rule promulgated hereunder, the  
22 ~~director~~ secretary may ~~apply~~ petition in the name of the state to  
23 the circuit court of the county in which the violations or any part

1 thereof has occurred, is occurring or is about to occur, or to the  
2 judge thereof in vacation, for an injunction against ~~such~~ the  
3 persons and any other persons who have been, are or are about to be  
4 involved in any practices, acts or admissions so in violation,  
5 enjoining ~~such~~ the person or persons from any violation or  
6 violations. ~~Such application~~ The petition may be made and  
7 prosecuted to conclusion, whether or not any violation or  
8 violations have resulted or shall result in prosecution or  
9 conviction under the provisions of this article.

10 (b) Upon ~~application~~ petition by the ~~director~~ secretary, the  
11 circuit courts of this state may, by mandatory or prohibitory  
12 injunction, compel compliance with the provisions of this article  
13 and all orders and final decisions of the ~~director~~ secretary. The  
14 court may issue a temporary injunction in any case pending a  
15 decision on the merits of any ~~application~~ petition filed. Any  
16 other section of this code to the contrary notwithstanding, the  
17 state shall not be required to furnish bond or other undertaking as  
18 a prerequisite to obtaining mandatory, prohibitory or temporary  
19 injunctive relief under the provisions of this article.

20 (c) The judgment of the circuit court upon ~~application~~  
21 petition permitted by the provisions of this section shall be final  
22 unless reversed, vacated or modified on appeal to the Supreme Court  
23 of Appeals. Any ~~such~~ appeal shall be sought in the manner and

1 within the time provided by law for appeals from circuit courts in  
2 other civil actions.

3 (d) The ~~director~~ secretary shall be represented in all such  
4 proceedings by the secretary's in-house counsel as provided in  
5 section six, article one of this chapter, or the secretary may be  
6 represented by the Attorney General or the Attorney General's  
7 assistants or ~~in such proceedings in the circuit courts~~ by the  
8 prosecuting attorney of the several counties, ~~as well,~~ all without  
9 additional compensation. The ~~director~~ secretary, with the written  
10 approval of the Attorney General, may employ special counsel to  
11 represent the ~~director~~ secretary in ~~any such~~ those proceedings.

12 (e) If the ~~director~~ secretary shall refuse or fail to apply  
13 for an injunction to enjoin a violation or threatened violation of  
14 any provision of this article, any order or final decision of the  
15 ~~director,~~ secretary or any rules promulgated hereunder within ten  
16 days after receipt of a written request to do so by any well  
17 operator, coal operator operating coal seams beneath the tract of  
18 land, or the coal seam owner or lessee, if any, if said owner or  
19 lessee is not yet operating said coal seams beneath said tract of  
20 land, adversely affected by ~~such~~ the violation or threatened  
21 violation, the person making ~~such~~ the request may apply on ~~their~~  
22 his, her or its own behalf for an injunction to enjoin ~~such~~ the  
23 violation or threatened violation in any court in which the

1 ~~director~~ secretary might have brought suit. The ~~director~~ secretary  
2 shall be made party defendant in ~~such application~~ that petition in  
3 addition to the person or persons violating or threatening to  
4 violate any provisions of this article, any final order or decision  
5 of the ~~director,~~ secretary or any rule promulgated hereunder. The  
6 ~~application~~ petition shall proceed and injunctive relief may be  
7 granted in the same manner as if the application had been made by  
8 the ~~director.~~ Except secretary, except that the court may require  
9 a bond or other undertaking from the plaintiff.

10 ~~§22-6-40. Appeal from order of issuance or refusal of permit to~~  
11 ~~drill or fracture; procedure.~~

12 ~~Any party to the proceeding under section fifteen of this~~  
13 ~~article or section seven, article eight, chapter twenty-two-c of~~  
14 ~~this code, adversely affected by the issuance of a drilling permit~~  
15 ~~or to the issuance of a fracturing permit or the refusal of the~~  
16 ~~director to grant a drilling permit or fracturing permit is~~  
17 ~~entitled to judicial review thereof. All of the pertinent~~  
18 ~~provisions of section four, article five, chapter twenty-nine-a of~~  
19 ~~this code shall apply to and govern such judicial review with like~~  
20 ~~effect as if the provisions of said section four were set forth in~~  
21 ~~extenso in this section.~~

22 ~~The judgment of the circuit court shall be final unless~~  
23 ~~reversed, vacated or modified on appeal to the Supreme Court of~~

1 ~~Appeals in accordance with the provisions of section one, article~~  
2 ~~six, chapter twenty-nine-a of this code.~~

3 **§22-6-40. Seismic activity.**

4 (a) Prior to conducting any seismic activity for seismic  
5 exploration for oil or gas, the company or person performing the  
6 activity must provide notice to Miss Utility of West Virginia Inc.  
7 and to all surface owners, mineral owners, and storage field  
8 operators on whose property blasting, percussion or other seismic-  
9 related activities will occur or whose property interests are  
10 within the geographic area encompassed by the seismic study.

11 (b) The notice shall be provided at least thirty days prior to  
12 commencement of the seismic activity and shall specify a seventy-  
13 two hour period in which the blasting, percussion or other seismic-  
14 related activity will occur. In the event the seismic activity is  
15 not performed within the designated seventy-two period, the company  
16 or person performing seismic activity shall send a revised notice.

17 (c) The notice shall also include a reclamation plan in  
18 accordance with the erosion and sediment control manual that  
19 provides for the reclamation of any areas disturbed as a result of  
20 the seismic activity, including filling of shotholes utilized for  
21 blasting.

22 (d) Nothing in this section shall be construed to decide  
23 questions as to whether seismic activity may be secured by mineral

1 owners, surface owners or other ownership interests.

2 **ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPENSATION.**

3 **§22-7-3. Compensation of surface owners for drilling operations.**

4 (a) The oil and gas developer shall be obligated to pay the  
5 surface owner compensation for:

6 (1) Lost income or expenses incurred as a result of being  
7 unable to dedicate land actually occupied by the driller's  
8 operation or to which access is prevented by ~~such~~ the drilling  
9 operation to the uses to which it was dedicated prior to  
10 commencement of the activity for which a permit was obtained  
11 measured from the date the operator enters upon the land until the  
12 date reclamation is completed, (2) the market value of crops  
13 destroyed, damaged or prevented from reaching market, (3) the  
14 stumpage value of timber, as that term is defined by the West  
15 Virginia Division of Forestry, destroyed, damaged or prevented from  
16 reaching market, ~~(3)~~ (4) any damage to a water supply in use prior  
17 to the commencement of the permitted activity, ~~(4)~~ (5) the cost of  
18 repair of personal property up to the value of replacement by  
19 personal property of like age, wear and quality, and ~~(5)~~ (6) the  
20 diminution in value, if any, of the surface lands and other  
21 property after completion of the surface disturbance done pursuant  
22 to the activity for which the permit was issued determined  
23 according to the actual use made thereof by the surface owner

1 immediately prior to the commencement of the permitted activity.

2       The amount of damages may be determined by any formula  
3 mutually agreeable between the surface owner and the oil and gas  
4 developer.

5       (b) Any reservation or assignment of the compensation provided  
6 in this section apart from the surface estate except to a tenant of  
7 the surface estate is prohibited.

8       (c) In the case of surface lands owned by more than one person  
9 as tenants in common, joint tenants or other coownership, any claim  
10 for compensation under this article shall be for the benefit of all  
11 ~~such~~ coowners. The resolution of a claim for compensation provided  
12 in this article shall operate as a bar to the assertion of  
13 additional claims under this section arising out of the same  
14 drilling operations.

15       **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES**

16                   **COMMISSIONS AND COMPACTS.**

17       **ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.**

18       **§22C-8-2. Definitions.**

19       Unless the context in which used clearly requires a different  
20 meaning, as used in this article:

21       (1) "Board" means the shallow gas well review board provided  
22 for in section four of this article;

23       (2) "Chair" means the chair of the shallow gas well review

1 board provided for in section four of this article;

2 (3) "Coal operator" means any person who proposes to or does  
3 operate a coal mine;

4 (4) "Coal seam" and "workable coal bed" are interchangeable  
5 terms and mean any seam of coal twenty inches or more in thickness,  
6 unless a seam of less thickness is being commercially worked, or  
7 can in the judgment of the ~~division~~ department foreseeably be  
8 commercially worked and will require protection if wells are  
9 drilled through it;

10 (5) "Commission" means the Oil and Gas Conservation Commission  
11 provided for in section four, article nine of this chapter;

12 (6) "Commissioner" means the oil and gas conservation  
13 commissioner provided for in section four, article nine of this  
14 chapter;

15 (7) "Correlative rights" means the reasonable opportunity of  
16 each person entitled thereto to recover and receive without waste  
17 the gas in and under a tract or tracts, or the equivalent thereof;

18 (8) "Deep well" means any well other than a shallow well or  
19 coalbed methane well, drilled ~~and completed in to~~ to a formation ~~at or~~  
20 below the top of the uppermost member of the "Onondaga Group;"

21 (9) ~~"Division"~~ "Department" means the state ~~division~~  
22 Department of Environmental Protection provided for in chapter  
23 twenty-two of this code;



1       ~~(10)~~ "Director" means the director of the Division of  
2 Environmental Protection as established in article one, chapter  
3 twenty-two of this code or such other person to whom the division  
4 department delegates authority or duties pursuant to sections six  
5 or eight, article one, chapter twenty-two of this code;

6       ~~(11)~~ (10) "Drilling unit" means the acreage on which the board  
7 decides one well may be drilled under section ten of this article;

8       ~~(12)~~ (11) "Gas" means all natural gas and all other fluid  
9 hydrocarbons not defined as oil in subdivision (15) of this  
10 section;

11       ~~(13)~~ (12) "Gas operator" means any person who owns or has the  
12 right to develop, operate and produce gas from a pool and to  
13 appropriate the gas produced therefrom either for such person or  
14 for such person and others. In the event that there is no gas  
15 lease in existence with respect to the tract in question, the  
16 person who owns or has the gas rights therein shall be considered  
17 a "gas operator" to the extent of seven-eighths of the gas in that  
18 portion of the pool underlying the tract owned by such person, and  
19 a "royalty owner" to the extent of one-eighth of such gas;

20       ~~(14)~~ (13) "Just and equitable share of production" means, as  
21 to each person, an amount of gas in the same proportion to the  
22 total gas production from a well as that person's acreage bears to  
23 the total acreage in the drilling unit;

1       ~~(15)~~ (14) "Oil" means natural crude oil or petroleum and other  
2 hydrocarbons, regardless of gravity, which are produced at the well  
3 in liquid form by ordinary production methods and which are not the  
4 result of condensation of gas after it leaves the underground  
5 reservoir;

6       ~~(16)~~ (15) "Owner" when used with reference to any coal seam,  
7 shall include any person or persons who own, lease or operate such  
8 coal seam;

9       ~~(17)~~ (16) "Person" means any natural person, corporation,  
10 firm, partnership, partnership association, venture, receiver,  
11 trustee, executor, administrator, guardian, fiduciary or other  
12 representative of any kind, and includes any government or any  
13 political subdivision or any agency thereof;

14       ~~(18)~~ (17) "Plat" means a map, drawing or print showing the  
15 location of one or more wells or a drilling unit;

16       ~~(19)~~ (18) "Pool" means an underground accumulation of gas in  
17 a single and separate natural reservoir (ordinarily a porous  
18 sandstone or limestone). It is characterized by a single natural-  
19 pressure system so that production of gas from one part of the pool  
20 tends to or does affect the reservoir pressure throughout its  
21 extent. A pool is bounded by geologic barriers in all directions,  
22 such as geologic structural conditions, impermeable strata, and  
23 water in the formation, so that it is effectively separated from

1 any other pools which may be present in the same district or in the  
2 same geologic structure;

3 ~~(20)~~ (19) "Royalty owner" means any owner of gas in place, or  
4 gas rights, to the extent that such owner is not a gas operator as  
5 defined in subdivision (13) of this section;

6 (20) "Secretary" means the Secretary of the Department of  
7 Environmental Protection as established in article one, chapter  
8 twenty-two of this code or such other person to whom the secretary  
9 delegates authority or duties pursuant to sections six or eight,  
10 article one, chapter twenty-two of this code;

11 (21) "Shallow well" means any gas well other than a coalbed  
12 methane well, drilled no deeper than one hundred feet below the top  
13 of the "Onondaga Group": and completed in a formation above the top  
14 of the uppermost member of the "Onondaga Group:"~~Provided, That in~~  
15 ~~drilling a shallow well the well operator may penetrate into the~~  
16 ~~"Onondaga Group" to a reasonable depth, not in excess of twenty~~  
17 ~~feet, in order to allow for logging and completion operations, but~~  
18 in no event may the "Onondaga Group" formation or any formation  
19 below the "Onondaga Group" be ~~otherwise~~ produced, perforated or  
20 stimulated in any manner;

21 (22) "Tracts comprising a drilling unit" means that all  
22 separately owned tracts or portions thereof which are included  
23 within the boundary of a drilling unit;

1           (23) "Well" means any shaft or hole sunk, drilled, bored or  
2 dug into the earth or into underground strata for the extraction,  
3 injection or placement of any liquid or gas, or any shaft or hole  
4 sunk or used in conjunction with such extraction, injection or  
5 placement. The term "well" does not include any shaft or hole  
6 sunk, drilled, bored or dug into the earth for the sole purpose of  
7 core drilling or pumping or extracting therefrom potable, fresh or  
8 usable water for household, domestic, industrial, agricultural or  
9 public use; and

10           (24) "Well operator" means any person who proposes to or does  
11 locate, drill, operate or abandon any well.

12 **§22C-8-4. Shallow gas well review board; membership; method of**  
13                           **appointment; vacancies; compensation and expenses;**  
14                           **staff.**

15           (a) There is hereby continued the Shallow Gas Well Review  
16 Board which shall be composed of three members, ~~two of whom shall~~  
17 ~~be the commissioner, and the chief of the office of oil and gas a~~  
18 person representing the interests of surface owners of real  
19 property, and ~~The remaining member of the board shall be a~~  
20 registered professional who has been successfully tested in mining  
21 engineering, with at least ten years practical experience in the  
22 coal mining industry, ~~and~~ the latter two of which shall be  
23 appointed by the Governor, ~~7~~ by and with the advice and consent of

1 the Senate: *Provided*, That any person ~~so~~ appointed while the Senate  
2 ~~of this state~~ is not in session shall be permitted to serve in an  
3 acting capacity for one year from appointment or until the next  
4 session of the Legislature, whichever is less. As soon as  
5 practical after appointment and qualification of the member  
6 appointed by the Governor, the Governor shall convene a meeting of  
7 the board for the purpose of organizing and electing a chair, who  
8 serves as such until a successor is elected by the board.

9 (b) A vacancy in the membership appointed by the Governor  
10 shall be filled by appointment by the Governor within sixty days  
11 after the occurrence of ~~such~~ the vacancy. Before performing any  
12 duty hereunder, each member of the board shall take and subscribe  
13 to the oath required by section 5, article IV of the Constitution  
14 of West Virginia, and serves thereafter until a successor has been  
15 appointed and qualified.

16 (c) The members of the board appointed by the Governor shall  
17 be paid the same compensation, and each member of the board shall  
18 be paid the expense reimbursement, as is paid to members of the  
19 Legislature for their interim duties as recommended by the Citizens  
20 Legislative Compensation Commission and authorized by law for each  
21 day or portion thereof engaged in the discharge of official duties.  
22 Each member of the board shall also be reimbursed for all  
23 reasonable and necessary expenses actually incurred in the

1 performance of the duties as a member of the board.

2 (d) The ~~division~~ department shall furnish office and clerical  
3 staff and supplies and services, including reporters for hearings,  
4 as required by the board.

5 **ARTICLE 9. OIL AND GAS CONSERVATION.**

6 **§22C-9-1. Declaration of public policy; legislative findings.**

7 (a) It is hereby declared to be the public policy of this  
8 state and in the public interest to:

9 (1) Foster, encourage and promote exploration for and  
10 development, production, utilization and conservation of oil and  
11 gas resources;

12 (2) Prohibit waste of oil and gas resources and unnecessary  
13 surface loss of oil and gas and their constituents;

14 (3) Encourage the maximum recovery of oil and gas; and

15 (4) Safeguard, protect and enforce the correlative rights of  
16 operators and royalty owners in a pool or unconventional reservoir  
17 of oil or gas to the end that each such operator and royalty owner  
18 may obtain his just and equitable share of production from such  
19 pool or unconventional reservoir of oil or gas.

20 (b) The Legislature hereby determines and finds that oil and  
21 natural gas found in West Virginia in shallow sands or strata have  
22 been produced continuously for more than one hundred years; that  
23 oil and gas deposits in such shallow sands or strata have

1 geological and other characteristics different than those found in  
2 ~~deeper~~ other formations; and that in order to encourage the maximum  
3 recovery of oil and gas from all productive formations in this  
4 state, it is not in the public interest, with the exceptions of  
5 shallow wells utilized in a secondary recovery program and  
6 horizontal shallow wells, to enact statutory provisions relating to  
7 the exploration for or production from oil and gas from shallow  
8 wells, as defined in section two of this article, but that it is in  
9 the public interest to enact statutory provisions establishing  
10 regulatory procedures and principles to be applied to the  
11 exploration for or production of oil and gas from deep wells and  
12 horizontal shallow wells, as defined in said section two.

13 **§22C-9-2. Definitions.**

14 (a) Unless the context in which used clearly requires a  
15 different meaning, as used in this article:

16 (1) "Commission" means Oil and Gas Conservation Commission and  
17 "commissioner" means the oil and gas conservation commissioner as  
18 provided for in section four of this article;

19 (2) "Director" means the director of the ~~Division of~~  
20 ~~Environmental Protection~~ oil and gas and "chief" "secretary" means  
21 ~~the chief of the office of oil and gas~~ secretary of the Department  
22 of Environmental Protection;

23 (3) "Person" means any natural person, corporation,

1 partnership, receiver, trustee, executor, administrator, guardian,  
2 fiduciary or other representative of any kind, and includes any  
3 government or any political subdivision or any agency thereof;

4 (4) "Operator" means any owner of the right to develop,  
5 operate and produce oil and gas from a pool and to appropriate the  
6 oil and gas produced therefrom, either for ~~such~~ that person or for  
7 ~~such~~ that person and others; in the event that there is no oil and  
8 gas lease in existence with respect to the tract in question, the  
9 owner of the oil and gas rights therein shall be considered as  
10 "operator" to the extent of seven-eighths of the oil and gas in  
11 that portion of the pool underlying the tract owned by ~~such~~ the  
12 owner, and as "royalty owner" as to one-eighth interest in ~~such~~ the  
13 oil and gas; and in the event the oil is owned separately from the  
14 gas, the owner of the substance being produced or sought to be  
15 produced from the pool shall be considered as "operator" as to ~~such~~  
16 that pool;

17 (5) "Royalty owner" means any owner of oil and gas in place,  
18 or oil and gas rights, to the extent that ~~such~~ the owner is not an  
19 operator as defined in subdivision (4) of this section;

20 (6) "Independent producer" means a producer of crude oil or  
21 natural gas whose allowance for depletion is determined under  
22 Section 613A of the federal Internal Revenue Code in effect on July  
23 1, 1997;



1        (7) "Net proceeds" means the actual proceeds received less  
2 post-production costs incurred downstream of the wellhead,  
3 including without limitation, gathering, compression, treating,  
4 transportation, and marketing costs;

5        ~~(7)~~ (8) "Oil" means natural crude oil or petroleum and other  
6 hydrocarbons, regardless of gravity, which are produced at the well  
7 in liquid form by ordinary production methods and which are not the  
8 result of condensation of gas after it leaves the underground  
9 reservoir;

10       ~~(8)~~ (9) "Gas" means all natural gas and all other fluid  
11 hydrocarbons not defined as oil in subdivision ~~(7)~~ (8) of this  
12 section;

13       ~~(9)~~ (10) "Pool" means an underground accumulation of petroleum  
14 or gas in a single and separate reservoir (ordinarily a porous  
15 sandstone or limestone). It is characterized by a single natural-  
16 pressure system so that production of petroleum or gas from one  
17 part of the pool affects the reservoir pressure throughout its  
18 extent. A pool is bounded by geologic barriers in all directions,  
19 such as geologic structural conditions, impermeable strata, and  
20 water in the formations, so that it is effectively separated from  
21 any other pools that may be presented in the same district or on  
22 the same geologic structure;

23        (11) "Pooling" means the integration of interests within a

1 drilling unit created voluntarily or pursuant to this article to  
2 facilitate the drilling of wells producing from one or more  
3 unconventional reservoirs;

4 ~~(10)~~ (12) "Well" means any shaft or hole sunk, drilled, bored  
5 or dug into the earth or underground strata for the extraction of  
6 oil or gas;

7 ~~(11)~~ (13) "Shallow well" means any well other than a coalbed  
8 methane well, drilled no deeper than one hundred feet below the top  
9 of the "Onondaga Group": and completed in a formation above the top  
10 of the uppermost member of the "Onondaga Group:" *Provided, That in*  
11 *drilling a shallow well the operator may penetrate into the*  
12 *"Onondaga Group" to a reasonable depth, not in excess of twenty*  
13 *feet, in order to allow for logging and completion operations, but*  
14 *in no event may the "Onondaga Group" formation or any formation*  
15 *below the "Onondaga Group" be otherwise produced, perforated or*  
16 *stimulated in any manner;*

17 ~~(12)~~ (14) "Deep well" means any well, other than a shallow  
18 well or coalbed methane well, drilled and completed in to a  
19 formation at or below the top of the uppermost member of the  
20 "Onondaga Group;"

21 (15) "Horizontal shallow well" means a shallow well that is  
22 first drilled on a vertical or directional plane, but which is  
23 eventually curved to become horizontal (or near horizontal) in

1 order to parallel a particular geologic formation. Multiple  
2 horizontal wells may be drilled from the same surface well pad. A  
3 horizontal shallow well may also have multiple horizontal side  
4 laterals drilled into the same formation. A horizontal shallow  
5 well may have completions into multiple formations above the  
6 Onondaga Group from the same well base to the extent the operator  
7 has the right to develop those formations and has or obtains the  
8 voluntary rights or any necessary commission authorization to do  
9 so;

10 (16) "Lateral" means the portions of a well bore that deviate  
11 from approximate vertical orientation to approximate horizontal  
12 orientation and all well bores beyond such deviation to total depth  
13 or terminus thereof;

14 ~~(13)~~ (17) "Drilling unit" means the acreage on which one or  
15 more wells may be drilled to produce oil or gas from a specified  
16 formation;

17 (18) "Unconventional reservoir" means any geological formation  
18 existing that contains or is otherwise productive of oil or natural  
19 gas that generally cannot be produced at economic flow rates nor in  
20 economic volumes except by wells stimulated by hydraulic fracture  
21 treatments, a horizontal wellbore, or by using multilateral  
22 wellbores or some other technique to expose more of the reservoir  
23 to the wellbore;

1        (19) "Unitization" means the combination of two or more  
2 leasehold tracks or mineral interests to more efficiently extract  
3 the oil or gas from the target formation;

4        ~~(14)~~ (20) "Waste" means and includes:

5        (A) Physical waste, as that term is generally understood in  
6 the oil and gas industry;

7        (B) The locating, drilling, equipping, operating or producing  
8 of any oil or gas well in a manner that causes, or tends to cause,  
9 a reduction in the quantity of oil or gas ultimately recoverable  
10 from a pool or unconventional reservoir under prudent and proper  
11 operations, or that causes or tends to cause unnecessary or  
12 excessive surface loss of oil or gas; or

13        (C) The drilling of more ~~deep~~ wells than are reasonably  
14 required to recover efficiently and economically the maximum amount  
15 of oil and gas from a pool or unconventional reservoir. Waste does  
16 not include gas vented or released from any mine areas as defined  
17 in section two, article one, chapter twenty-two-a of this code or  
18 from adjacent coal seams which are the subject of a current permit  
19 issued under article two of chapter twenty-two-a of this code:  
20 *Provided*, That nothing in this exclusion is intended to address  
21 ownership of the gas;

22        ~~(15)~~ (21) "Correlative rights" means the reasonable  
23 opportunity of each person entitled thereto to recover and receive

1 without waste the oil and gas in and under his or her tract or  
2 tracts, or the equivalent thereof; and

3 ~~(16)~~ (22) "Just and equitable share of production" means, as  
4 to each person, an amount of oil or gas or both substantially equal  
5 to the amount of recoverable oil and gas in that part of a pool or  
6 unconventional reservoir underlying ~~such~~ that person's tract or  
7 tracts.

8 (b) Unless the context clearly indicates otherwise, the use of  
9 the word "and" and the word "or" shall be interchangeable, as, for  
10 example, "oil and gas" shall mean oil or gas or both.

11 **§22C-9-3. Application of article; exclusions.**

12 (a) Except as provided in subsection (b) of this section, the  
13 provisions of this article shall apply to all lands located in this  
14 state, however owned, including any lands owned or administered by  
15 any government or any agency or subdivision thereof, over which the  
16 state has jurisdiction under its police power. The provisions of  
17 this article are in addition to and not in derogation of or  
18 substitution for the provisions of article six, chapter twenty-two  
19 of this code.

20 (b) This article shall not apply to or affect:

21 (1) Shallow wells other than those utilized in secondary  
22 recovery programs as set forth in section eight of this article and  
23 horizontal shallow wells as set forth in section nine of this

1 article;

2 (2) Any well commenced or completed prior to ~~the ninth day of~~  
3 ~~March, one thousand nine hundred seventy-two~~ March 9, 1972, unless  
4 ~~such~~ the well is, after completion (whether ~~such~~ completion is  
5 prior or subsequent to that date):

6 (A) Deepened subsequent to that date to produce from a  
7 formation at or below the top of the uppermost member of the  
8 "Onondaga Group"; or

9 (B) Involved in secondary recovery operations for oil under an  
10 order of the commission entered pursuant to section eight of this  
11 article;

12 (3) Gas storage operations or any well employed to inject gas  
13 into or withdraw gas from a gas storage reservoir or any well  
14 employed for storage observation; or

15 (4) Free gas rights.

16 (c) The provisions of this article shall not be construed to  
17 grant to the commissioner or the commission authority or power to:

18 (1) Limit production or output, or prorate production of any  
19 oil or gas well, except as provided in subdivision (6), subsection  
20 (a), section seven of this article; or

21 (2) Fix prices of oil or gas.

22 (d) Nothing contained in either this chapter or chapter  
23 twenty-two of this code may be construed so as to require, prior to

1 commencement of plugging operations, a lessee under a lease  
 2 covering a well to give or sell the well to any person owning an  
 3 interest in the well, including, but not limited to, a respective  
 4 lessor, or agent of the lessor, nor shall the lessee be required to  
 5 grant to a person owning an interest in the well, including, but  
 6 not limited to, a respective lessor, or agent of a lessor, an  
 7 opportunity to qualify under section twenty-six, article six,  
 8 chapter twenty-two of this code to continue operation of the well.

9 **§22C-9-4. Oil and gas conservation commissioner and commission;**

10 **commission membership; qualifications of members;**  
 11 **terms of members; vacancies on commission; meetings;**  
 12 **compensation and expenses; appointment and**  
 13 **qualifications of commissioner; general powers and**  
 14 **duties.**

15 (a) The "Oil and Gas Conservation Commission" shall be  
 16 composed of five members. The ~~director of the Division of~~  
 17 ~~Environmental Protection and the chief of the office of oil and gas~~  
 18 State Geologist or his or her designee shall be a ~~members~~ of the  
 19 commission ex officio. The remaining ~~three~~ four members of the  
 20 commission shall be appointed by the Governor by and with the  
 21 advice and consent of the Senate, and may not be employees of the  
 22 ~~division~~ Department of Environmental Protection. Of the ~~three~~ four

1 members appointed by the Governor, one shall be an independent  
2 producer and at least one shall be a public member not engaged in  
3 an activity under the jurisdiction of the Public Service Commission  
4 or the federal energy regulatory commission. The third appointee  
5 shall possess a degree from an accredited college or university in  
6 petroleum engineering or geology and must be a registered  
7 professional engineer with particular knowledge and experience in  
8 the oil and gas industry and shall serve as commissioner and as  
9 chair of the commission. The fourth appointee shall be a member of  
10 the public representing the interests of surface owners of real  
11 property.

12 (b) The members of the commission appointed by the Governor  
13 shall be appointed for overlapping terms of six years each, except  
14 that the original appointments shall be for terms of two, four and  
15 six years, respectively. Each member appointed by the Governor  
16 shall serve until the member's successor has been appointed and  
17 qualified. Members may be appointed by the Governor to serve any  
18 number of terms. The members of the commission appointed by the  
19 Governor, before performing any duty hereunder, shall take and  
20 subscribe to the oath required by section 5, article IV of the  
21 Constitution of West Virginia. Vacancies in the membership  
22 appointed by the Governor shall be filled by appointment by the  
23 Governor for the unexpired term of the member whose office is



1 vacant, and ~~such~~ the appointment shall be made by the Governor  
2 within sixty days of the occurrence of ~~such~~ the vacancy. Any  
3 member appointed by the Governor may be removed by the Governor in  
4 case of incompetency, neglect of duty, gross immorality or  
5 malfeasance in office. A commission member's appointment shall be  
6 terminated as a matter of law if that member fails to attend three  
7 consecutive meetings. The Governor shall appoint a replacement  
8 within thirty days of the termination.

9 (c) The commission shall meet at ~~such~~ the times and places ~~as~~  
10 ~~shall be~~ designated by the chair. The chair may call a meeting of  
11 the commission at any time, and shall call a meeting of the  
12 commission upon the written request of two members or upon the  
13 written request of the oil and gas conservation commissioner or the  
14 chief director of the ~~office~~ division of oil and gas. Notification  
15 of each meeting shall be given in writing to each member by the  
16 chair at least fourteen calendar days in advance of the meeting.  
17 Three members of the commission, at least two of whom are appointed  
18 members, shall constitute a quorum for the transaction of any  
19 business.

20 (d) The commission shall pay each member the same compensation  
21 as is paid to members of the Legislature for their interim duties  
22 as recommended by the Citizens Legislative Compensation Commission  
23 and authorized by law for each day or portion thereof engaged in

1 the discharge of official duties and shall reimburse each member  
2 for actual and necessary expenses incurred in the discharge of  
3 official duties.

4 (e) The commission is hereby empowered and it is the  
5 commission's duty to execute and carry out, administer and enforce  
6 the provisions of this article in the manner provided herein.  
7 Subject to the provisions of section three of this article, the  
8 commission has jurisdiction and authority over all persons and  
9 property necessary therefor. The commission is authorized to make  
10 ~~such~~ investigation of records and facilities as the commission  
11 deems proper. In the event of a conflict between the duty to  
12 prevent waste and the duty to protect correlative rights, the  
13 commission's duty to prevent waste shall be paramount.

14 (f) Without limiting the commission's general authority, the  
15 commission shall have specific authority to:

16 (1) Regulate the spacing of deep wells;

17 (2) Make and enforce reasonable rules and orders reasonably  
18 necessary to prevent waste, protect correlative rights, govern the  
19 practice and procedure before the commission and otherwise  
20 administer the provisions of this article;

21 (3) Issue subpoenas for the attendance of witnesses and  
22 subpoenas duces tecum for the production of any books, records,  
23 maps, charts, diagrams and other pertinent documents, and

1 administer oaths and affirmations to such witnesses, whenever, in  
2 the judgment of the commission, it is necessary to do so for the  
3 effective discharge of the commission's duties under the provisions  
4 of this article; and

5 (4) Serve as technical advisor regarding oil and gas to the  
6 Legislature, its members and committees, to the ~~chief~~ director of  
7 ~~office~~ the division of oil and gas, to the ~~division~~ Department of  
8 Environmental Protection and to any other agency of state  
9 government having responsibility related to the oil and gas  
10 industry.

11 (g) The commission may delegate to the commission staff the  
12 authority to approve or deny an application for new well permits,  
13 to establish drilling units or special field rules if:

14 (1) The application conforms to the rules of the commission;  
15 and

16 (2) No request for hearing has been received.

17 (h) The commission may not delegate its authority to:

18 (1) Propose legislative rules;

19 (2) Approve or deny an application for new well permits, to  
20 establish drilling units or special field rules if the conditions  
21 set forth in subsection (g) of this section are not met; or

22 (3) Approve or deny an application for the pooling of  
23 interests within a drilling unit.

1 (i) Any exception to the field rules or the spacing of wells  
2 which does not conform to the rules of the commission, and any  
3 application for the pooling of interests within a drilling unit,  
4 must be presented to and heard before the commission.

5 **§22C-9-7a. Drilling units and the pooling of interests in drilling**  
6 **units in connection with shallow horizontal oil**  
7 **or gas wells.**

8 (a) Drilling units.

9 (1) An application to establish drilling units may be filed  
10 with the commission by the operator or owner of any lands directly  
11 and immediately affected by the drilling of a horizontal shallow  
12 oil or gas well. Each application shall contain information as  
13 prescribed by reasonable rules proposed by the commission in  
14 accordance with the provisions of section five of this article.

15 (2) To establish a drilling unit pursuant to this section, the  
16 applicant must control, by ownership, lease or contract, at least  
17 seventy-five percent of the net acreage (calculating partial  
18 interests on a pro rata, net acreage basis) in such existing or  
19 proposed drilling unit.

20 (3) Upon the filing of an application to establish drilling  
21 units, the commission shall provide notice to all interested  
22 parties in accordance with section five of this article.  
23 Interested parties to a proposed drilling unit are persons who

1 control an interest in the proposed drilling unit who have not  
2 otherwise entered into a voluntary agreement with the applicant and  
3 the owners of oil and gas in the target formation in land directly  
4 adjacent to but outside the proposed drilling unit.

5 (4) If the application does not conform to the existing rules  
6 of the commission, then the commission shall set a hearing and  
7 provide notice to all interested parties. If the application  
8 conforms to the rules of the commission, the commission shall  
9 provide notice of the filing of the application to all interested  
10 parties. Each notice shall describe the area for which a  
11 unitization order is to be entered in recognizable, narrative  
12 terms; contain other information as is essential to the giving of  
13 proper notice, including the time and date and place of a hearing,  
14 if any; include a statement that any party has a right to a hearing  
15 before the commission; and include a statement that any request for  
16 hearing must be filed with the commission within thirty days of  
17 receipt of notice. If no request for hearing has been received  
18 within the thirty days following receipt of the notice, the  
19 commission may proceed to process the application. If a request  
20 for hearing has been received by the commission, then the  
21 commission shall set a hearing and provide notice to all interested  
22 parties.

23 (5) The commission shall determine the acreage to be contained

1 within each drilling unit, the shape thereof, and the minimum  
2 distance from the outside boundary of the unit at which a  
3 horizontal shallow well may be drilled thereon. The commission  
4 shall consider:

5 (A) The surface topography and property lines of the lands  
6 underlaid by the drilling units to be included in such order;

7 (B) The azimuth of the horizontal shallow wells to be drilled,  
8 the location of the drilling pad within the drilling unit on which  
9 multiple wells will be drilled, and the number of horizontal  
10 shallow wells to be drilled on the pad;

11 (C) The plan of horizontal shallow well spacing then being  
12 employed or proposed in the drilling unit for the lands;

13 (D) The depth at which production from the drilling unit is  
14 located;

15 (E) The nature and character of the producing unconventional  
16 reservoir, and whether the substance produced or sought to be  
17 produced is gas or oil or both;

18 (F) The maximum area which may be drained efficiently and  
19 economically by one horizontal shallow well;

20 (G) Any established or proposed drilling units for the same  
21 formation that are adjacent to the proposed drilling unit; and

22 (H) Any other available geological or scientific data  
23 pertaining to the unconventional reservoir which may be of

1 probative value to the commission in determining the proper  
2 horizontal shallow well drilling units therefor.

3 If the commission determines that additional drilling units  
4 should be established, the commission shall enter an order  
5 establishing those drilling units of a specified and approximately  
6 uniform size and shape for each drilling unit subject to the  
7 provisions of this section.

8 (6) When it is determined that an unconventional reservoir  
9 underlies an area for which a unitization order is to be entered  
10 for a drilling unit or units, the commission shall include in its  
11 order all lands determined or believed to be affected by the  
12 drilling unit or units and exclude all other lands.

13 (7) No drilling unit established by the commission shall be  
14 smaller than the maximum area which can be drained efficiently and  
15 economically by one horizontal shallow well: *Provided*, That if  
16 there is not sufficient evidence from which to determine the area  
17 which can be drained efficiently and economically by one horizontal  
18 shallow well, the commission may enter an order establishing  
19 temporary drilling units for the orderly development of the  
20 unconventional reservoir pending the obtaining of information  
21 necessary to determine the ultimate spacing for the unconventional  
22 reservoir.

23 (8) In considering the request for drilling unit, the

1 commission may establish additional units if it determines that the  
2 additional units are necessary to effectuate the purposes of this  
3 article. When establishing additional units, the commission shall  
4 provide notice to all interested parties and allow all interested  
5 parties to participate in a hearing for the additional unit or  
6 units.

7 (9) A unitization order establishing drilling units shall  
8 specify the minimum distance from the nearest outside boundary of  
9 the drilling unit at which a horizontal shallow well may be  
10 drilled. If the commission finds that a horizontal shallow well to  
11 be drilled at or more than the specified minimum distance from the  
12 boundary of a drilling unit would not be likely to produce in  
13 paying quantities or will encounter surface conditions which would  
14 substantially add to the burden or hazard of drilling the  
15 horizontal shallow well, or that a location within the area  
16 permitted by the order is prohibited by the lawful order of any  
17 state agency or court, the commission is authorized after notice  
18 and hearing to make an order permitting the horizontal shallow well  
19 to be drilled at a location within the minimum distance prescribed  
20 by the order. In granting exceptions to the order, the commission  
21 may restrict the production from any horizontal shallow well so  
22 that each person entitled thereto in the drilling unit shall not  
23 produce or receive more than his or her just and equitable share of



1 the production from the unconventional reservoir.

2 (10) An order establishing drilling units for an  
3 unconventional reservoir shall cover all lands determined or  
4 believed to be affected by the drilling unit or units, and may be  
5 modified by the commission from time to time to include additional  
6 lands determined to be affected by the drilling unit or units or to  
7 exclude lands determined not to be affected by the drilling unit or  
8 units. An order establishing drilling units may be modified by the  
9 commission to permit the drilling of additional horizontal shallow  
10 wells on a reasonably uniform pattern at a uniform minimum distance  
11 from the nearest unit boundary as provided above. Any order  
12 modifying a prior order shall be made only after application by an  
13 interested operator and notice and hearing as prescribed herein for  
14 the original order: *Provided*, That drilling units established by  
15 order shall not exceed six hundred forty acres for a horizontal  
16 shallow gas well: *Provided, however*, That the commission may exceed  
17 the acreage limitation by ten percent if the applicant demonstrates  
18 that the area would be drained efficiently and economically by a  
19 larger drilling unit.

20 (11) After the date an application to establish drilling units  
21 has been filed with the commission, no additional horizontal  
22 shallow well shall be commenced for production from the proposed  
23 units until the order establishing drilling units has been made,

1 unless the commencement of the horizontal shallow well is  
2 authorized by order of the commission.

3 (12) The commission shall, within forty-five days after the  
4 filing of an application to establish drilling units for an  
5 unconventional reservoir subject to the provisions of this section,  
6 enter an order establishing the drilling units, dismiss the  
7 application, or for good cause, continue the application process.

8 (13) As part of the order establishing a drilling unit, the  
9 commission shall prescribe just and reasonable terms and conditions  
10 upon which the royalty interests in the unit shall, in the absence  
11 of voluntary agreement, be deemed to be integrated without the  
12 necessity of a subsequent order integrating the royalty interests.

13 (14) If a hearing has been held on an application submitted  
14 pursuant to this subsection, the order shall be a final order. If  
15 no hearing has been held, the commission shall issue a proposed  
16 order and shall provide a copy of the proposed order, together with  
17 notice of the right to appeal and request a hearing, to all  
18 interested parties. Any party aggrieved by the proposed order may  
19 appeal the proposed order to the full commission and request a  
20 hearing. Notice of appeal and request for hearing shall be made in  
21 accordance with section ten of this article within thirty days of  
22 entry of the order. If the commission does not receive an appeal  
23 and request for hearing within thirty days, the proposed order

1 shall become final.

2 (b) Pooling of interests in drilling units.

3 (1) When two or more separately owned tracts are embraced  
4 within a drilling unit, or when there are separately owned  
5 interests in all or a part of a drilling unit, the interested  
6 persons may pool their tracts or interests for the development and  
7 operation of the drilling unit. In the absence of voluntary  
8 pooling and upon application of the operator having the majority  
9 interest in the drilling unit, an operator may seek a pooling order  
10 from the commission after notice is provided to interested parties  
11 and upon a hearing of the commission. Each notice shall describe  
12 the area for which an order is to be entered in recognizable,  
13 narrative terms; and contain such other information as is essential  
14 to the giving of proper notice, including the time and date and  
15 place of a hearing. After the hearing, the commission shall enter  
16 an order pooling all tracts or interests in the drilling unit for  
17 the development and operation thereof and for sharing production  
18 therefrom. Each pooling order shall be upon terms and conditions  
19 which are just and reasonable, and in no event shall drilling be  
20 initiated on the tract of an unleased owner without the owner's  
21 written consent.

22 (2) All operations, including, but not limited to, the  
23 commencement, drilling or operation of a horizontal shallow well

1 upon any portion of a drilling unit for which a pooling order has  
2 been entered, shall be deemed for all purposes the conduct of  
3 operations upon each separately owned tract or portion thereof in  
4 the drilling unit by the several owners thereof. That portion of  
5 the production allocated to a separately owned tract or portion  
6 thereof included in a drilling unit shall, when produced, be deemed  
7 for all purposes to have been actually produced from the tract by  
8 a horizontal shallow well drilled thereon.

9       (3) Any pooling order under the provisions of subsection (b)  
10 shall authorize the drilling and operation of a horizontal shallow  
11 well for the production of oil or gas from the pooled acreage;  
12 shall designate the operator to drill and operate the horizontal  
13 shallow well; shall prescribe the time and manner in which all  
14 owners of operating interests in the pooled tracts or portions of  
15 tracts may elect to participate therein; shall provide that all  
16 reasonable costs and expenses of drilling, completing, equipping,  
17 operating, plugging and abandoning the horizontal shallow well  
18 shall be borne, and all production therefrom shared, by all owners  
19 of operating interests in proportion to the net oil or gas acreage  
20 in the pooled tracts owned or under lease to each owner; and shall  
21 make provisions for payment of all reasonable costs thereof,  
22 including a reasonable charge for supervision and for interest on  
23 past-due accounts, by all those who elect to participate therein.

1       (4) In determining the operator, the commission should  
2 designate any person who controls seventy-five percent or more of  
3 the acreage in the pooled tracts. If no person owns more than  
4 seventy-five percent of the acreage in the pooled unit, the  
5 commission will designate the operator based upon the criteria that  
6 will effectuate the purposes of this article.

7       (5) Each pooling order shall specify the activities that the  
8 operator may conduct on the surface of the tracts subject to the  
9 order in accordance with the following criteria:

10       (A) Where the owner of a mineral interest that is subject to  
11 the pooling order has not leased its interest, surface disturbance  
12 may not be conducted upon the surface of the unleased mineral  
13 interest without consent from the owner or upon a showing by the  
14 operator that there is no other feasible location within the  
15 drilling unit to locate the drilling pad or access road or pipeline  
16 incidental to the drilling activities.

17       (B) Where the owner of a mineral interest that is subject to  
18 the pooling order has leased its mineral interest, drilling  
19 activities may be conducted on the surface of the lease tract and  
20 the operator may construct and operate access roads and pipelines  
21 incidental to the drilling activities on the surface of all  
22 property subject to the pooling order in accordance with the terms  
23 of the lease governing surface activities if the operator provides

1 the owners of the surface estate the notice provided for in section  
2 twelve, article six, chapter twenty-two of this code and if the  
3 operator provides the owner of the surface estate compensation for  
4 damages pursuant to the Oil and Gas Production Damage Compensation  
5 Act established in article seven, chapter twenty-two of this code.

6 (6) Upon request, any pooling order shall provide just and  
7 equitable alternatives whereby an owner of an operating interest  
8 who does not elect to participate in the risk and cost of the  
9 drilling of a horizontal shallow well may elect:

10 (A) Option 1. Either to assign an oil and gas lease ownership  
11 interest to the operator on such terms as the parties may agree or,  
12 if unable to agree, upon such terms as are established by the  
13 commission in an order; or to lease an unleased oil and gas  
14 ownership interest pursuant to the terms of the oil and gas lease  
15 the operator submitted with the application; or

16 (B) Option 2. To become a nonoperating working interest owner  
17 by participating in the risk and cost of the well in accordance  
18 with the terms of section six of this article and the joint  
19 operating agreement the operator submitted with the application; or

20 (C) Option 3. To participate in the operation of the well as  
21 a nonoperating carried interest owner in accordance with the terms  
22 of section six of this article and the joint operating agreement  
23 the operator submitted with the application ("Carried Well

1 Operator").

2 (7) Any interest owners whose interests are already subject to  
3 an oil and gas lease shall have no election rights and, other than  
4 the operator having the right to pool the interests, their  
5 interests shall continue to be governed by the terms of their  
6 leases and in accordance with the provisions of this article. Any  
7 interest owner who does not make an election within the thirty days  
8 prescribed herein and any interest owner who chooses Option 2 but  
9 does not tender its share of the estimated drilling costs to the  
10 operator within thirty days from the date of the commission's order  
11 establishing the pool shall be deemed to have elected Option 1.

12 (A) The royalty interest shall be the weighted average of the  
13 royalties payable under all leases and parts of the leases  
14 controlled by the operator that are included in the unit as of the  
15 date of the application, and the minimum royalty shall be the  
16 minimum royalty for oil and gas leases at the time of the  
17 application pursuant to laws of this state: *Provided*, That any  
18 royalty owner who, in good faith, has entered into an arm's length,  
19 bona fide lease or other contract providing for any different  
20 royalty or payment amount shall be entitled to receive the royalty  
21 calculated at the rate provided for in that contract subject to the  
22 lease attribution provisions of this section. Each person entitled  
23 to a royalty shall be entitled to the royalty interest of the net

1 proceeds received by the operator for the sale of the oil or gas  
2 produced from the well development and operation multiplied by that  
3 person's interest within the unit.

4 (B) The working interest owners' net revenue share shall be  
5 the net proceeds of sale of oil and gas multiplied by that person's  
6 interest within the unit. Any overriding royalties, royalties  
7 exceeding a one-eighth royalty or other costs attributable solely  
8 to an oil and gas lease shall be paid out of the applicable  
9 interest owner's net revenue share.

10 (C) In the case of Option 3, the proportionate part of the  
11 completed-for-production costs allocable to the carried well  
12 operator's interest shall be charged against the carried well  
13 operator's share of production from the drilling unit. The carried  
14 well operator's rights, interests, and claims in and to the oil and  
15 gas obtained from the drilling unit are assigned to the operator  
16 until the proceeds from the sale of the carried well operator's  
17 share of production from the drilling unit (exclusive of any  
18 royalty, excess or overriding royalty or other nonoperating or  
19 noncost bearing burden reserved in any lease, assignment thereof or  
20 agreement relating thereto covering the interest) equals risk  
21 premium to be determined by the commission to be between two  
22 hundred and three hundred percent of the carried well operator's  
23 share of the completed-for-production costs allocable to the



1 interest of the carried interest owner. The completed-for-  
2 production costs are the operator's actual costs for the well  
3 development and operation.

4 (D) After each owner has made, or has been deemed to have  
5 made, an election pursuant to subsection (5) of this section, the  
6 operator shall distribute a statement of interests to the interest  
7 owners whose interests have been pooled according to this section  
8 of the code. The statement of interests shall set out the net  
9 revenue interest of each working interest owner, including each  
10 carried interest owner, and the royalty interest of each royalty  
11 owner. The fractional interest of each owner shall be expressed as  
12 a decimal carried to the eighth place. Thereafter, payments shall  
13 be made to working interest owners, carried interest owners, and  
14 royalty owners in accordance with the statement of interests,  
15 except that payments attributable to conflicting claims may be  
16 deposited in a suspense account or otherwise dealt with in  
17 accordance with the provisions of the applicable lease or joint  
18 operating agreement.

19 (E) Upon resolution of conflicting claims, either by voluntary  
20 agreement of the parties or a final judicial determination, the  
21 operator shall distribute a revised statement of interests  
22 reflecting the agreement or determination.

23 (F) To the extent an interest owner cannot be determined or

1 located after diligent efforts by the well operator, the well  
2 operator shall hold the monies payable to that interest owner in a  
3 suspense account for that interest owner until that interest owner  
4 is located or the property is deemed abandoned and disposed of in  
5 accordance with the provisions of the Uniform Unclaimed Property  
6 Act, whichever comes first.

7 (8) If a dispute shall arise as to the costs of drilling,  
8 completing, equipping and operating a deep well, the commission  
9 shall determine and apportion the costs, within ninety days from  
10 the date of written notification to the commission of the existence  
11 of such dispute.

12 (9) The commission shall, within forty-five days after the  
13 filing of an application, enter an order, dismiss the application,  
14 or for good cause, continue the application process.

NOTE: The purpose of this bill is to modernize the oil and gas regulatory program and to provide a means to regulate horizontal drilling and drilling processes that utilize large volumes of water. It also adds "timber" to the list of things for which a surface owner may be compensated. The bill also removes the Chief of the Office of Oil & Gas from the Shallow Gas Well Review Board and replaces the chief with a person representing the interests of surface owners of real property. Finally, it removes the Secretary of the Department of Environmental Protection and the Chief of the Office of Oil & Gas from the Conservation Commission and replaces them with the state Geologist and a person representing the interests of surface owners of real property and provides a new section to regulate pooling of gas from horizontal shallow wells.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§22C-9-7a is new; therefore, it has been completely underscored.